(20,755.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 104.

SOUTHERN RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

ST. LOUIS HAY & GRAIN COMPANY.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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a In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1905.

No. 1329.

SOUTHERN RAILWAY COMPANY, Plaintiff in Error.
vs.
ST. LOUIS HAY & GRAIN COMPANY, Defendant in Error.

Mr. Edward C. Kramer, Counsel for Plaintiff in Error.
Mr. W. F. Forman, Mr. L. O. Whitnel, Mr. P. J. Farrell, Counsel for Defendant in Error.

Error to the Circuit Court of the United States for the Eastern District of Illinois.

1 *Placita.*

UNITED STATES OF AMERICA:

United States Circuit Court, Eastern District of Illinois, May Term, 1906.

Pleas in the United States Circuit Court for the Eastern District of Illinois, at a regular term thereof begun and held at the United States Court House, in the City of East St. Louis, Illinois, in said District, on the first Monday (being the seventh day) of May, in the year of our Lord one thousand nine hundred and six, and of the Independence of the United States the one hundred and thirtieth year.

Present: Hon. Francis M. Wright, Judge of the District Court of the United States for the Eastern District of Illinois, sitting as Circuit Judge.

The following proceedings were had and entered of record, to-wit:

Be it remembered that heretofore, to-wit: on January 23d, 1906, came the plaintiff, St. Louis Hay & Grain Company, by its attorneys, Forman & Whitnel, and filed in the office of the Clerk of the United States Circuit Court for the Eastern District of Illinois its petition herein which is in the words and figures following, to-wit:

2 *Petition of St. Louis Hay & Grain Co., Filed Jan. 23, 1906.*

In the Circuit Court of the United States for the Eastern District of Illinois, Sitting as a Court of Law.

No. —, —— Term.

ST. LOUIS HAY AND GRAIN COMPANY
vs.
SOUTHERN RAILWAY COMPANY.

Suit to Collect Reparation Fixed by Order of the Interstate Commerce Commission.

Forman & Whitnel, Attorneys for Petitioner.

To the Honorables the Judges of the Circuit Court of the United States within and for the Eastern District of the State of Illinois:

The petition of the above-named plaintiff respectfully shows:

1. That the plaintiff is a corporation organized under the laws of the State of Illinois, that its principal office is at East St. Louis, in said State; that it has a place of business also at East St. Louis, Illinois, and that it is engaged among other things in the transportation of hay from East St. Louis in the State of Illinois, to points in other States of the United States over the railway to the defendant, the Southern Railway Company.

2. That the defendant, the Southern Railway Company, is a corporation organized under the laws of the State of Virginia; that its principal office is at Richmond in said State; that it is engaged as a common carrier in the transportation of property by railroad between points in different States of the United States; that on June 1, 1903, it was, ever since has been and still is possessed of, using and operating a line of railway extending from the City of East St. Louis, Illinois, through the Eastern District of Illinois to points in other States of the United States, to which the petitioner is engaged in shipping hay from said City of East St. Louis over the line
3 of said defendant, as aforesaid, and as hereinafter stated; and that during all said times, said defendant has been and still is subject to the provisions of the Act to regulate commerce, approved February 4, 1887, and Acts amendatory thereof or supplementary thereto.

3. That the defendant, the Southern Railway Company, in the prosecution of its business as a common carrier, on the first day of June, 1903, had and maintained, ever since has had and maintained, and now has and maintains, offices and agents in the City of East St. Louis and State of Illinois and within the Eastern District of the State of Illinois, for the purpose of making contracts for carrying freight, and also for the purpose of collecting transportation charges on such freight, and that it, the defendant, committed the acts hereinafter complained of and specifically referred to in Exhibits A, B, and C, hereinafter mentioned, at said East St. Louis.

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4. That under and in pursuance of Section 13 of said Act to regulate commerce, the plaintiff, the St. Louis Hay & Grain Company, did, on June 8, 1904, file with the Interstate Commerce Commision a petition dated the 27th day of May, 1904, and by said petition appealed to said Interstate Commerce Commission, a tribunal which existed on said 27th day of May, ever since has existed, and now exists, under and by authority of said Act to regulate commerce, complaining therein to said Interstate Commerce Commission against the Mobile & Ohio Railroad Company, the Illinois Central Railroad Company, the Louisville & Nashville Railroad Company, and said Southern Railway Company, of certain alleged violations by said defendants of provisions of said Act to regulate commerce, and asking for reparation on account of damages suffered by the petitioner, said St. Louis Hay & Grain Company, in consequence of such alleged violations as fully and specifically appears in and by a copy of said petition, marked "Exhibit A", and hereto annexed and hereby made a part of this petition.

5. That thereupon and forthwith, after the filing of said petition, the said Interstate Commerce Commission did, as required by Section 13 of said Act to regulate commerce, forward to each of the defendants named in said petition, marked "Exhibit A" hereto, a statement of the charges therein set forth, together with a notice to satisfy the complainant or answer the same in writing within twenty days; that there-afterwards, answers to said petition were severally filed with said Commission by the defendants therein named, denying alleged violations of said Act to regulate commerce, as set forth in said petition, "Exhibit A" hereto; that thereafterwards, the said cause being at issue on the pleadings and having been heard and duly submitted for determination by said Commission on the testimony and other evidence duly taken, presented or filed on behalf of the respective parties and the same having been investigated and duly considered by said Commission, it was made to appear to the satisfaction of said Commission that said defendants had violated provisions of said Act to regulate commerce in certain respects as alleged in said petition, "Exhibit A," by reason of which the petitioner, said St. Louis Hay & Grain Company, had suffered damages for which it was entitled to reparation, and accordingly on the 15th day of May, 1905, the said Commission so adjudged and made a report in writing in respect thereto, setting forth therein the conclusions arrived at by the Commission in said cause and the findings of fact upon which said conclusions were based. A copy of said report, marked "Exhibit B", is hereto annexed and hereby made a part of this petition.

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6. That on the day of the making of the report referred to in paragraph five hereof, to-wit, the 15th day of May, 1905, the said Commission made and entered an order or notice to the defendant, the Southern Railway Company, requiring said defendant among other things to pay to the petitioner, the St. Louis Hay & Grain Company, as reparation for excessive charges on hay in carloads reconsigned from East St. Louis, Illinois, over defendant's line to points south of the Ohio River and east of the Mississippi River between the first day of June, 1903, and the first day of February,

1905, the sum of one thousand, five hundred and seventy-two and 8/100 dollars, ($1,572.08). A copy of said order, marked "Exhibit C," is hereto annexed and hereby made a part of this petition.

7. That there-afterwards, to-wit, on the 15th day of May, 1905, the said Commission caused a copy of said report, "Exhibit B" hereto and of said order or notice, "Exhibit C" hereto, to be delivered to the defendant, the Southern Railway Company.

8. That the defendant, the Southern Railway Company, did willfully fail and neglect to obey and conform to the requirements of the said order and notice of May 15, 1905, "Exhibit C" hereto, and especially did willfully fail and neglect and has ever willfully failed and neglected to obey and conform to the requirements of said order and notice, commanding said defendant to refund to the petitioner, the St. Louis Hay & Grain Company, as reparation for excessive charges on hay in carloads reconsigned from East St. Louis, Illinois, over said defendant's line to points south of the Ohio River and east of the Mississippi River between the first day of June 1903, and the first day of February, 1905, the sum of one thousand, five hundred seventy-two and 8/100 dollars, ($1,572.08), although often requested thereto by the plaintiff, the St. Louis Hay & Grain Company.

Whereof, and in accordance with Section 1-t of said Act to regulate commerce, your petitioner, the St. Louis Hay & Grain Company, brings this suit and humbly prays.

First. That this honorable court will, by its order, fix a time and place for the trial of this cause in accordance with said Act to regulate commerce:

Second, That this honorable court will hear, determine and adjudicate the matters involved in this cause hereinabove and in the said exhibits hereto attached set forth;

Third. That the court will order the defendant to pay the petitioner such sum of money for a counsel or attorney's fee as the court may deem the petitioner entitled to;

Fourth. That the court may make such other order or orders in the premises as may be meet and proper.

Dated at East St. Louis, Illinois, December 21st, 1905.

FORMAN & WHITNEL,
Attorneys for Petitioners.

EXHIBIT "A."

Exhibit A—Petition.

Before the Interstate Commerce Commission.

ST. LOUIS HAY & GRAIN COMPANY
vs.
MOBILE & OHIO RAILROAD COMPANY; ILLINOIS CENTRAL RAILROAD COMPANY; LOUISVILLE & NASHVILLE RAILROAD COMPANY; and SOUTHERN RAILWAY COMPANY.

The petition of the above-named complainant respectfully shows:

1. That complainant is a corporation existing under the laws of the State of Missouri; that its principal office and place of business is

located at St. Louis in that State; and that it is engaged in the purchase, shipment and sale of hay.

II. That the above-named defendants are common carriers engaged in the transportation of property by railroad between East St. Louis, Illinois, on the one hand, and points in States of the United States situated south of the States of Kentucky and Virginia and east of the Mississippi River, which will be called hereinafter "southeastern points," on the other hand; and as such common carriers are subject to the provisions of the Act to regulate commerce approved February 4, 1887, and acts amendatory thereof or supplementary thereto.

III. That defendants have adopted and maintain in force upon their respective lines of railway schedules of rates and charges wherein and whereby it is provided that the charges exacted for transportating hay in carloads over said lines, respectively, from East St. Louis to said southeastern points, shall be 2 cents per 100 pounds in addition to the regular established rates for transporting hay in carloads from Cairo, Illinois, to said southeastern points, when the shipments originate at points on railroads other than those of defendants and are not reconsigned at East St. Louis, and 4 cents per 100 pounds in addition to such established rates when the shipments are reconsigned at East St. Louis; that is to say, 2 cents per 100 pounds is exacted in each instance by defendants, respectively, for the privilege of reconsignment at East St. Louis.

7 IV. That complainant made shipments of hay in carloads over defendant's lines of railway, as described in Schedule A, hereto attached and made a part hereof, on or about the dates mentioned in said Schedule, from East St. Louis to said southeastern points; that said shipments were reconsigned at East St. Louis; and that defendants exacted for the transportation thereof, as described in said Schedule, 4 cents per 100 pounds in addition to such established rates between Cairo and said southeastern points, while they contemporaneously severally transported, in carloads, hay that was not reconsigned at East St. Louis, for other shippers and between exactly the same originating and destination points, for 2 cents per 100 pounds in addition to said established rates between Cairo and said Southeastern points.

V. That the cost to defendants, respectively, in each instance, of transporting such shipments from East St. Louis to said southeastern points, is the same whether the shipments are reconsigned at East St. Louis or not; that the higher transportation charge hereinbefore described is unreasonable; and that by reason of the premises each of said defendants has subjected, and still is subjecting, complainant and its traffic to the payment of unreasonable and unjust rates of transportation and to undue and unreasonable prejudice and disadvantage, and has given, and still is giving, to said other shippers and their traffic undue and unreasonable preferences and advantage, in violation of the provisions of the Act to regulate commerce, particularly Sections 1, 2 and 3 thereof.

Wherefore complainant prays that said defendants may be severally required to answer the charges herein; that after due hearing

and investigation an order be made requiring each of said defendants to cease and desist from the aforesaid violations of said Act to regulate commerce, and pay to complainant such a sum of money by way of damages as in view of the evidence to be adduced herein, the Commission may deem complainant entitled to; and that such other and further order or orders may be made as the Commission may consider necessary in the premises and complainant's cause may appear to require.

Dated at St. Louis, Missouri, May 27th, 1904.

ST. LOUIS HAY & GRAIN COMPANY,
By FRED DEIBEL,
President and Treasurer.

8 EXHIBIT "B."

Exhibit B—Report and Opinion.

Before the Interstate Commerce Commission.

No. 757.

ST. LOUIS HAY & GRAIN COMPANY
vs.
MOBILE & OHIO RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, LOUISVILLE & NASHVILLE RAILROAD COMPANY, and SOUTHERN RAILWAY COMPANY.

Decided May 15, 1905.

Jas. W. Dye for complainant.
Ed. Baxter for M. & O. R. R. Co., I. C. R. R. Co. and L. & N. R. R. Co.
Ed. Baxter, E. C. Kramer and C. B. Northrup for So. R'y Co.

Report and Opinion of the Commission.

9 Interstate Commerce Reports.

No. 757.

ST. LOUIS HAY & GRAIN CO.
v.
MOBILE & O. R. CO. ET AL.

ST. LOUIS HAY & GRAIN COMPANY
v.
MOBILE & OHIO RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, LOUISVILLE & NASHVILLE RAILROAD COMPANY, and SOUTHERN RAILWAY COMPANY.

Decided May 15, 1905.

1. Stopping a commodity in transit to treatment or reconsignment is in the nature of a special privilege which the carrier may concede, but which the shipper, under the present state of

the law, cannot demand as a matter of lawful right; but carrie-s may not unjustly discriminate between markets or individuals in the granting of such privileges.

2. In allowing the privilege of reconsigning hay at East St. Louis to southern destinations, defendants are entitled to charge for such privilege what it actually costs them; and the fair average cost to the carrier when complainant or others handle the hay through warehouses at East St. Louis, over and above the cost of handling in East St. Louis a through shipment via East St. Louis to southern destinations, is $2 to $2.50 per car, or approximately 1 cent per 100 lbs. Shipments routed through East St. Louis are carried from that point to southern destinations at a proportional rate, which is 2 cents per 100 lbs. above the rate from Ohio River crossings to the same destinations. Hay reconsigned to such points from warehouses in East St. Louis is charged 4 cents per 100 lbs. above the Ohio River rate. Hay appears to be reconsigned from warehouses at Ohio River points, and at Nashville and Memphis, to southern points without additional charge.

Held, upon all the facts, that defendant's rates on reconsignments of hay from warehouses in East St. Louis to points south of
10 the Ohio River, amounting to 2 cents more than their proportional rate from East St. Louis on through shipments, are unjust and unreasonable, and that complainant is entitled to reparation.

Jas. W. Dye, for Complainant.

Ed. Baxter, for M. & O. R. R. Co., I. C. R. R. Co. and L. & N. R. R. Co.

Ed. Baxter, E. C. Kramer and C. B. Northrup, for So. R'y Co.

Report and Opinion of the Commission.

PROUTY, *Commissioner:*

The defendants in this proceeding are the Mobile & Ohio Railroad Company, the Illinois Central Railroad Company, the Louisville & Nashville Railroad Company, and the Southern Railway Company. They all operate lines of railroad leading from East St. Louis Illinois, to points south of the Ohio River and east of the Mississippi, and all engage in the transportation of various commodities from that point to the territory above defined. The defendants all have in effect what they term proportional rates on hay which is received at East St. Louis by them from their connections. These proportional rates to southeastern points are two cents above the rate from the Ohio River when the shipment is made directly through East St. Louis, but if the hay is "reconsigned" at East St. Louis the charge is 4 cents above the Ohio River rate: It is the imposition of this additional two cents for the privilege of reconsigning to which the conplainant takes exception.

Large quantities of hay produced in territory east, north and west of East St. Louis are consumed in southeastern territory. This hay can and frequently does reach its destination through some other gateway than East St. Louis, but much of it can be and is carried through that gateway. Of the defendant lines, the Illinois Central reaches north of East St. Louis but the other three lines terminate there. The lines of railway bringing this hay from the point of origin also terminate as a rule at East St. Louis. For the purpose of establishing a basis of through rates upon which business may be transacted and by which it will be attracted to the lines of the
11 defendants at East St. Louis, these proportional rates have been put into effect.

The tariffs of some of, if not all, the defendants contemplate the application of this proportional rate only to shipments which are in fact through billed from the point of origin to destination. If this rule were strictly applied, hay shipped locally to East St. Louis and afterwards sent on, even though not unloaded, should pay a rate of 4 cents above that from the Ohio River. This, however, is not the practical interpretation which the carriers themselves have put upon these tariffs. In point of fact, if a carload of hay is consigned to East St. Louis locally upon the local rate, and the consignee of that carload determines upon its arrival in East St. Louis to send it directly forward, he may do so by paying to the line which brings it into St. Louis what is called a reconsigning charge of $2 per car. This line upon receiving directions from the consignee will deliver the car to the proper southern line, which receives it and carries it on as a through shipment. The southern lines actually know that carloads of hay received by them at the so-called through proportional rate have been shipped into St. Louis upon the local rate. In other words, they do not inquire, and make no distinction between hay which has been billed from the point of origin to some point south of the Ohio River and hay which has been billed locally into St. Louis and reconsigned at St. Louis without being removed from the car. If, however, the hay is unloaded by the owner at St. Louis, a rate of 4 cents above the Ohio River rate is always imposed.

East St. Louis is an important hay market, to which large quantities of hay are shipped for sale. This hay is usually consigned to commission merchants who sell it upon inspection in the car in which it arrives. The purchaser frequently unloads it at East St. Louis for consumption there. He sometimes ships it forward in the original car to the southeastern point. More often when intended for southeastern territory it is taken to a warehouse and unloaded for the purpose of grading, assorting and reloading.

The complainant is a corporation under the laws of the State of Illinois with its principal office at St. Louis, Mo., engaged in the business of handling hay, in course of which it operates two warehouses at East St. Louis. While the complainant buys to some extent from the producer in the country, its principal business seems to be the purchasing of hay on the track from commission
12 men at East St. Louis, which it sends for the most part into this southeastern territory. It may occasionally send forward

a car without unloading; most of its hay is taken to its warehouses, there unloaded, inspected, assorted, and reloaded for the southern markets. It will be seen, therefore, that the practical effect of this reconsigning rule is to permit the track buyer at East St. Louis, who sends the carload which he purchases directly through without unloading, to do so at a rate two cents better than that paid by the complainant, who puts his hay into the warehouse. The evidence fairly shows that the privilege of unloading is of value to the complainant, but how valuable did not appear.

The defendants justify the imposition of this higher charge where the hay is taken to a warehouse and unloaded, as in the case of the complainant, by the additional cost which that mode of handling entails. The complainant insists that the cost of the service to the carrier is no greater in that case that in the other and that, therefore, the imposition of this charge is unreasonable. The important question of fact would seem to be, does this additional service impose an additional burden upon the carriers, and, if so, what is the fair amount of the increased expense?

Anything like an exact determination of this is rendered impossible by the complicated conditions at East St. Louis. Mr. Snell, the representative of the Wiggins Ferry Company, testified that as a rule northern lines had no physical connection with southern lines, so that, ordinarily, cars must be switched by some belt line, of which there seem to be several, in making the connection. Some lines from the South make more physical connections than others, and the Southern Railway appears to own one of the belt lines through which it forms a connection with every railroad entering East St. Louis from the North. The warehouses at which hay is handled are situated sometimes upon one line of railway and sometimes upon another. It is evident, therefore, that the cost to a particular railroad of permitting this unloading of hay at East St. Louis would vary with the line by which the hay arrived from the north and with the location of the warehouse at which the hay was handled. Every line must, however, put itself upon an equality with its competitor and the fact that some particular line is obliged to make an absorption in the case of reconsigned business which it does not make in case of through business is no reason why that absorption should be counted as a part of the expense of reconsignment in general. The attempt should be rather to arrive at a fair estimate of the average cost.

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Perhaps this can be best done by taking the warehouse of this complainant as an example. This warehouse is located upon the tracks of the Southern Railway and also upon those of the Wiggins Ferry Company, one of the belt lines which make connections, as we understand it, between all incoming and outcoming railroads.

The Southern Railway, as already stated, makes connection with all northern lines, and therefore a carload of hay arriving by any road from the North or West might reach the storehouse of the complainant in two ways; namely, via the Southern Railway and via the Wiggins Ferry lines. Let us assume, first, that it is sent there by the Wiggins Ferry route.

The cost to the in-road of delivering this carload may be assumed to be the same whether it is turned over to the Wiggins Ferry Company to be sent to the storehouse of the complainant, or to be switched to some connecting line for through shipment. There is, therefore, up to the point of its receipt by the Wiggins Ferry Company no difference of expense between the two transactions. The Wiggins Ferry Company switched the car to the storehouse of the complainant and takes out the empty, as we understand the testimony, for a charge of $2.00 per car. When, Now, this hay goes to the South the Southern Railway sets in an empty car at the storehouse of the complainant and takes out the loaded car. It may be fairly assumed that the service of taking transportation south entails on the average, the same expense as would be entailed in taking the through car from the northern connection and placing that in its train. The difference in service performed by the southern road in the two cases consists, therefore, in setting an empty car at the storehouse of the complainant. This service in our opinion is fairly worth from 40 to 60 cents.

When this complaint was filed, the complainant, in a transaction like that above detailed, paid the charge of the Wiggins Ferry Company, which was then $1.50. Since the first hearing of this case that charge has been increased to $2.00, and is now absorbed, owing to certain competitive conditions, by the line carrying the traffic south, in this instance the Southern Railway.

Let us assume, now, that the carload of hay, instead of being delivered to the Wiggins Ferry Company is delivered directly
14 to the Southern Railway. That company takes the car and places it in its southbound train in case of through shipment, but switches it to the warehouse of the complainant if it is to be unloaded. The same service in taking the car out from the warehouse must be performed as before. We may assume, again, that the cost to the Southern of placing the car in its train is the same when received from the northern road as when taken from the northern road as when taken from the storehouse of the complainant, so that the additional expense to the Southern line is the switching of the loaded car to the storehouse of the complainant, the moving of the empty car back to the northern line, and the moving of the empty car for its southbound load to the storehouse. The testimony fairly shows that the cost of switching the loaded car to the storehouse and taking the empty out would not exceed $2.00. Inasmuch as the complainant company can in any case obtain that service for $2.00, and inasmuch as the Southern Railway itself would only be compelled in that event to absorb $2.00, it would be unfair, certainly, to charge the complainant more.

It would seem, therefore, that in case of the complainant's warehouse when shipment south is made via the Southern road the additional cost to the Southern would not exceed about $2.50. This does not include the additional time which the car is in service, and which will be referred to later.

Let us assume, now, that the shipment south is made not by the Southern, but by the Louisville & Nashville, and that it arrives by

the Wabash, which has no physical connection with the Louisville & Nashville. If the carload of hay is delivered directly to the Louisville & Nashville it must be done by the Wiggins Ferry Company, or by some other belt line, for which the charge would be $2.00, which the Louisville & Nashville absorbs. If it goes to the complainant's warehouse, it is delivered to the Wiggins Ferry Company, and switched to the warehouse at an expense of $2.00. The service, therefore, of the Wabash Railroad and the Wiggins Ferry Company is exactly the same whether the car is delivered for through shipment or taken to the complainant's storehouse.

When, now, the car is sent forward application is made to the Louisville & Nashville for an empty, which is delivered to the Wiggins Ferry Company. That company now takes the empty to the storehouse and the loaded car from the storehouse, delivering the latter to the Louisville & Nashville. The cost to the Louisville & Nashville of putting that loaded car into its train is exactly the same whether it is received from the Wiggins Ferry Company as a through shipment or whether it is received as a reconsigned shipment; but in the latter case there is the additional expense of moving an empty car to the Wiggins Ferry Company. At the present time the Louisville & Nashville absorbs both the switching service to and the switching service from the storehouse of the complainant, and therefore, it pays by way of absorption $4.00 in case of the reconsigned shipment, while it pays but $2.00 in case of the through shipment. That is, the additional expense to that road is $2.00 plus the expense of switching its empty car to the Wiggins Ferry Connection, or, as in case of shipment out by the Southern, approximately $2.50 per car.

The Louisville & Nashville makes direct connection with several northern lines, and if the hay had reached St. Louis over one of these lines there would have been no switching charge involved in case of the through shipment, so that the additional switching charges absorbed would be $4.00 in case of the reconsignment as against nothing in case of the through shipment. But we have already seen that as a rule southern lines do not possess these physical connections. The Louisville & Nashville absorbs $4.00 instead of $2.00, because the complainant's warehouse being upon the Southern road it can ship its hay to any southeastern point via that line without payment of the switching charge. It is immaterial to it whether it makes shipment by the Southern or the Louisville & Nashville. It ought not, therefore, to be charged with this expense if the Louisville & Nashville sees fit to incur it in order to obtain its business.

If, instead of considering the warehouse of the defendant, we were to select one situated upon some inbound line instead of an outbound line the result would be apparently the same. Presumably the in-line can make delivery at the warehouse as cheaply as to the connecting carrier. When the car is switched out, the in-line must obtain an empty car from its southern connection, transport that car to the warehouse and the loaded car back, the cost of which would not be over $2.00. This charge would ordinarily be assumed by the southern line in case of the reconsigned shipment. Here,

again, therefore, the out-line would be — to the same additional expense of $2.00 per car plus the cost of delivering the empty car by the south-bound line to the northern line for its load.

While circumstances may be easily imagined where par-
16 ticular lines incur a greater added expense than that above indicated, it is believed that this fairly states the situation with respect to the shortest and cheapest route through East St. Louis in the great majority of cases, if not in all cases, and that $2.50 per car fully covers the expense so far as these elements are concerned. It was said in testimony that these figures allowed nothing for maintenance of track, etc. The charge for switching at East St. Louis has been, until October 1, 1904, $1.50 per car, and that included the entire expense to the switching lines; including the cost of their tracks and the maintenance. We apprehend that the figures above given would be a liberal estimate for the service covered, including all items of expense which can be properly charged against it. Substantially the same tracks are required in case of the through car which are needed in case of the reconsigned car. There is, however, one element which has not been taken into account in determining this additional expense, and that is the use of the car itself.

The testimony tends to show that the car is actually in service from two to three days longer in case of reconsigned carloads than in case of through shipments. The complainant denies this and introduces testimony tending to show that cars are promptly loaded at its warehouse, the time consumed being not ordinarily in excess of six to eight hours. It urges that if there is delay it is not with it, but upon the lines of the carriers, for which it is not responsible and ought not to be chargeable. It does seem to us that the outside figures given by the defendants are probably too high, but the delay in moving cars in yards more or less congested like those at East St. Louis is necessarily considerable and we think it fairly appears that an additional time of two to three days is required, and that the defendants are fairly entitled to compensation for the use of the car for this period. We do not agree, however, with the estimate put by the witnesses of the defendants upon the value of this service. Two of these witnesses estimate that a freight car is worth $1.50 per day. In our opinion there is no warrant for any such claim. The Commission has of late investigated the subject of private cars. It is claimed and generally believed that the returns to the owners of these cars are altogether excessive, yet that testimony disclosed the fact that the earnings from a stock car did not exceed from $6.00 to $8.00 per month; that the earnings from a refrigerator car under the most favorable circumstances did not exceed from $12.00
17 to $18.00 per month. The demurrage charge is only $1.00 a day, and that is imposed not on the basis of a fair *quantum meruit*, but as a penalty to secure the prompt release of the car. The carriers themselves have agreed on 20 cents a day as the per diem charge which should be made, and we think that is enough when, as in this case, the car is not actually moving but standing

still practically all the time. In our opinion an additional allowance of 60 cents may properly be made on this account.

To offset this additional burden in case of reconsigned shipments are certain advantages. While it frequently happens that carloads of hay are sent through to destination in the same cars in which they reach East St. Louis, we think the rule is probably otherwise. In times of car shortage, northern lines insist that the hay shall be transferred at East St. Louis from their cars to the cars of southern lines. While the testimony in this case does not show definitely the extent to which that is done, it fairly appears that it is done in many cases. The cost of the transfer is in the vicinity of $1.25 per car. It must also require in the placing of the cars and the making of the transfer one and probably on the average two days. Here is, therefore, a saving in case of reconsigned hay to the carriers of approximately $1.50 per car whenever the transfer must otherwise be made by them. In addition to that, the testimony shows that when cars are loaded at the warehouse they can always be loaded to their maximum capacity, whereas it often happens that otherwise the load is less than it might be. The difference would often amount to 1,000 to 2,000 pounds, and this again is an advantage in favor of the reconsigned hay.

It should be still further noted that cars from the North after being unloaded at the warehouse of the camplainant are frequently reloaded for the South, thus avoiding the expense of placing an empty by the southern line and subtracting, perhaps, a day from the additional time of the car service. The exact extent to which this is done did not appear. When the cars were plentiful northern lines would not probably object if their cars went south, but would in in case of car shortage. The same conditions which would permit the sending of the same car through to a southern destination would ordinarily lead to the loading of that car for the South at the warehouse of the complainant.

While the question is perplexing and while we may not have apprehended all the material points involved, we are strongly of
the opinion and find that, taking everything into account,
18 the average additional expense to southern lines in case of reconsigned hay will not exceed that of direct through shipments by more than from $2.00 to $2.50 per car, which is equivalent upon the average loading of hay to about one cent per hundred pounds.

Much of the hay which actually passes through East St. Louis might reach its southern destination via other gateways. Hay grown in different sections also competes via these other gateways in the South with that which does or might pass through East St. Louis. These gateways are Cincinnati, Louisville, Evansville, Cairo, Memphis, Nashville, and perhaps others. The testimony showed that at all these points hay could be stopped off, unloaded and treated as the complainant handles its at East St. Louis without the imposition of any charge in addition to the through rate. The witnesses said that this could be done as a matter of course at the Ohio River, since the through rate was equivalent to the local rates in and out.

No such reason was said to exist at Nashville or Memphis. The testimony showed that these markets all competed with East St. Louis, but the force of that competition did not appear.

The complainant claimed to recover as reparation whatever amount it had paid the various defendants for this reconsignment privileges between May 1, 1904, and February 1, 1905, and counsel for the defendants made no objection to the complainant's recovering for that entire period of entitled to recover at all. A detailed statement was introduced by the complainant, showing its shipments over the lines of each defendant for the above named period and the amounts in the aggregate at 2 cents per hundred pounds. The arrangement was that the defendants were to check over these shipments, and if found incorrect to notify the commission in order that further investigation might be made. No notice having been received from them, we assume that the amounts given by the complainant are correct.

These are against the several defendants as follows:

Southern Railway	$3,144.17
Mobile & Ohio Railroad	1,385.76
Louisville & Nashville Railroad	746.74
Illinois Central Railroad	179.90

We find that the complainant has actually paid to these several defendants the above sums at the rate of 2 cents per hundred pounds on reconsigned shipments.

The complainant further presented a claim for $107.64
19 against the Illinois Central Railroad Company and accompanied that with a bundle of expense bills and a mass of correspondence which had passed between it and that company. The local rate from East St. Louis on hay to the Ohio River is 5 cents per hundred pounds. The shipments involved in this last claim were billed by the Illinois Central Company at the local rate, while the complainant insists that they ought to have been at the reconsigned rate. In case of all the other shipments it was conceded that they were entitled to the reconsigned rate, the only question being as to the propriety or reasonableness of that rate. The question raised as to these shipments is whether they are entitled to any proportional rate at all or whether they should pay the local rate. There is no testimony in this record from which that question can be determined. We have not, therefore, attempted to find any fact with respect to that claim of the complainant.

No reconsignment charge is made at East St. Louis in case of grain and the complainant insisted that this works an undue discrimination against hay. We find, however, that grain rates at East St. Louis are forced by competitive conditions at other points and that the failure to impose a reconsignment charge upon that commodity in no way prejudices the complainant in the handling of hay.

Conclusions.

It is well understood that a through rate may properly be less than the sum of the locals to or from a divisional point. The mere fact, therefore, that these defendants make in connection with northern lines a joint rate on hay from points of production to points of consumption through East St. Louis which is less than the rate into that point added to the rate out does not establish the illegality of any of the rates involved.

The stopping of a commodity in transit for the purpose of treatment or reconsignment is in the nature of special privilege which the carrier may concede, but which the shipper can not, in the present state of the law, demand as a matter of lawful right. Diamond Mills *v.* Boston & M. R. R. Co., 9 I. C. C. Rep. 311. Carriers may not, however, discriminate between markets nor between individuals in the granting of such privileges. If this right is given to the markets which compete with East St. Louis in this business by these defendants it should, *prima facie*, also be granted to that market. If these defendants allow this privilege to the competitors of the complainant at East St. Louis they should accord it the same privilege.

The case shows, although not very clearly, that the defendants concede this privilege at other competing markets, and that a track buyer in East St. Louis itself can send along a carload, which he purchases but does not unload, without the payment of this charge. It further shows, however, that the right to unload this hay and handle it at its warehouse is of value to the complainant, and that it costs these defendants something to accord that privilege.

Under these circumstances, we think it is not an undue preference against this complainant if the railroads charge for the privilege what it actually costs them, but we do not think that they should charge more than the actual cost. The case finds that the fair average cost when the complainant handles its hay through its warehouse over and above the cost of a through shipment is from $2.00 to $2.50 per car, or approximately one cent per hundred pounds. We think, therefore, that this reconsignment charge ought not to exceed the proportional rate by more than one cent, and that the complainant is entitled to recover whatever it has paid in addition to that sum.

In deciding this case we have given to these schedules the practical interpretation which the defendants themselves have put upon them. It is very doubtful whether a strict construction of these various proportional tariffs would permit the southern lines to receive hay at the two-cent rate in any case where it was not billed through to final destination from the point of origin. But it would be so manifest a discrimination against this market to deny the right of reconsignment when that right could be accorded without additional expense, and when it is in fact accorded at every corresponding market, that we can hardly assume this to be the intention of the defendants. When an additional expense is incurred by switching the hay into and out of a warehouse there arises a legitimate reason for imposing a charge for that privilege.

The testimony tends to show, as already stated, that at other markets this additional service is performed without compensation, but that particular feature of the case is not set forth in the complaint and was only brought out upon the final hearing. It is conceivable that upon a full development of that phase of the matter we might reach the conclusion that the imposition of any reconsigning charge was an undue discrimination against East St. Louis, but our
21 present impression is from what appeared as to conditions at these other markets that the defendants may properly charge for the actual additional expense.

The defendants should be ordered to cease and desist from imposing the present reconsignment charge of 4 cents per hundred pounds, and the respective defendants should be directed to repay to the complainant one-half of the sums stated in the findings of fact to have been paid by the complainant to the various defendants.

EXHIBIT "C."

Exhibit C—Order of May 15, 1905.

At a General Session of the Interstate Commerce Commission, Held at its Office, in Washington, D. C., on the 15th Day of May, A. D. 1905.

Present: Hon. Martin A. Knapp, Chairman,
Hon. Judson C. Clements,
Hon. Charles A. Prouty,
Hon. Joseph W. Fifer,
Hon. Francis M. Cockrell,
Commissioners.

ST. LOUIS HAY & GRAIN COMPANY
vs.
MOBILE & OHIO RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, LOUISVILLE & NASHVILLE RAILROAD COMPANY, and SOUTHERN RAILWAY COMPANY.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report and opinion herein containing its findings of fact and conclusions hereon, which said report and opinion is hereby referred to and made a part of this order;

It Is Ordered: That the defendants, the Mobile & Ohio
22 Railroad Company, the Illinois Central Railroad Company, the Louisville & Nashville Railroad Company, and the Southern Railway Company, be, and they severally are hereby, notified and required to cease and desist, on or before the first day of July, 1905, from charging and enforcing on hay in carloads, reconsigned from East St. Louis, in the State of Illinois, over their lines to points

south of the Ohio River and east of the Mississippi River, the rate of four cents per hundred pounds, which said rate is found and declared in and by said report and opinion to be unjust and unreasonable, in violation of the provisions of the Act to regulate commerce.

It Is Further Ordered: That complainant is entitled to recover, and said defendants respectively are hereby directed to pay to complainant as reparation for excessive charges on hay, in carloads, reconsigned from East St. Louis, Illinois, over their lines, to points south of the Ohio and east of the Mississippi Rivers, between the first day of May, 1904, and the first day of February, 1905, the following sums, to-wit:

Mobile & Ohio Railroad Company	$692.88
Illinois Central Railroad Company	89.95
Louisville & Nashville Railroad Company	372.37
Southern Railway Company	1572.08

And It Is Further Ordered: That a notice embodying this order be forthwith sent to each of the defendant corporations, together with a copy of the report and opinion of the Commission herein, in conformity with the provisions of Section 15 of the Act to regulate commerce.

(Endorsed:) United States Circuit Court, Eastern District of Illinois. No. —, —— Term. St. Louis Hay & Grain Company *vs.* Southern Railway Company. Petition. Suit to collect reparation fixed by order of Interstate Commerce Commission. Filed January 23, 1906. Daniel Hogan, Clerk. Forman & Whitnel, Attorneys for Petitioner.

Be it further remembered that on, to-wit: January 25th, 1906, there issued out of said Clerk's office a summons, which summons together with the Marshal's return thereon are in the words and figures following, to-wit:

23 *Summons and Return. Filed Feb.* 24, 1906.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

The United States of America to the Marshal of the Eastern District of Illinois, Greeting:

We Command you to Summon Southern Railway Company, if found in your District, to be and appear before our Judges of our Circuit Court of the United States for the Eastern District of Illinois, on the first day of the next term thereof, to be holden at Danville, in the District aforesaid, on the First Monday of March next, to answer unto St. Louis Hay & Grain Company and to make reparation for excessive charges, etc., to plaintiff's damage, as is alleged, of One Thousand Five Hundred Seventy-two and 8/100 Dollars, and have you then and there this Writ.

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Danville, aforesaid, this 25th day of January in the year of our Lord one thousand nine hundred and six and of our independence the 130th year.

[SEAL.] DANIEL HOGAN, *Clerk*,
By A. S. HAMILTON, *Deputy*.

UNITED STATES OF AMERICA,
Eastern District of Illinois:

I have duly served the within Summons on the Southern Railway Company by delivering a copy of the same to L. E. Murray, agent of said company, at Centralia, Illinois, this 29th day of January A. D. 1906. The President, Vice President, Secretary, Treasurer, or other superior officer of said company not found in my district.

C. P. HITCH, *U. S. Marshal*,
By CHARLES E. FLINN, *Deputy*.

Marshal's fees $10.88, Paid.

Marshal's Civil Docket No. 74. Gen. No. 107. Circuit Court of U. S. Eastern District of Illinois. St. Louis Hay & Grain Co. *vs.* Southern Ry. Co. Summons. Returnable Mar. Term A. D. 1906. Daniel Hogan, Clerk. Filed Feb. 24, 1906. Daniel Hogan, Clerk.

24 Be it further remembered that on this same day, to-wit: Jan- 25th 1906, the following order of Court was made and entered of record in said cause, the copy of which order was duly served upon the defendant herein by the United States Marshal and which order of Court and the return of the Marshal thereon are in the words and figures following, to-wit:

Order of Jan. 25, 1906, Setting Cause for Trial.

Circuit Court of the United States, Eastern District of Illinois.

THURSDAY, *January* 25, 1906.

Present: Honorable Francis M. Wright, Judge.

Order.

ST. LOUIS HAY & GRAIN COMPANY
vs.
SOUTHERN RAILWAY COMPANY.

Suit to Collect Reparation Fixed by Order of Interstate Commerce Commission.

And now comes the St. Louis Hay & Grain Company, by Forman & Whitnel, its attorneys, and presents its petition to the Court, and enters its motion asking that a time and place be fixed by the Court for the hearing of this cause, and the Court being sufficiently advised,

It is ordered that this cause be tried at Danville, on the first Monday of March, being the fifth day of March, 1906, and that summons be issued herein accordingly.

25 *Marshal's Return. Filed Feb.* 24, 1906.

UNITED STATES OF AMERICA, *Eastern District of Illinois, ss:*

I have duly served the within Order on the Southern Railway Company by delivering a copy of the same, and also a copy of the Petition, to L. E. Murray, Agent of said company, at Centralia, Illinois, this 29th day of January, A. D. 1906. The President, Vice President, Secretary, Treasurer, or other superior officer of said company — found in my district.

C. P. HITCH,
United States Marshal,
By CHAS. E. FLINN, *Deputy.*

Marshal's fees $10.88. Paid.

(Endorsed:) Filed Feb. 24, 1906, Daniel Hogan, Clerk.

Be it further remembered that on, to-wit February, 6th, 1906, the following stipulation was filed in said cause, to-wit:

Stipulation. Filed Feb. 6, 1906.

In the United States Circuit Court for the Eastern District of Illinois.

ST. LOUIS HAY & GRAIN COMPANY
vs.
SOUTHERN RAILWAY COMPANY.

Petition for Reparation, etc.

It is hereby agreed by and between the parties hereto that the above entitled cause be set down for trial at East St. Louis, Illinois, at some time to be fixed by the Court, and it is further agreed on the part of the petitioner herein that the time within which the defendant is required to plead be extended until the 15th day of March, A. D. 1906.

Dated this 5th day of February A. D. 1906.

FORMAN & WHITNEL,
Attorneys for Petitioner.
KRAMER & KRAMER,
Attorneys for Defendant.

(Endorsed:) Filed Feb. 6, 1906, Daniel Hogan, Clerk.

26 Be it further remembered that afterwards on, to-wit: March 14, 1906, the following order of court was made and entered of record, to-wit:

Order of March 14, 1906.

No. 107.

ST. LOUIS HAY & GRAIN COMPANY
vs.
SOUTHERN RAILWAY COMPANY.

Now on this day, Wednesday March 14, 1906, on motion of the defendant's attorney and by the consent of the parties the rule to plead to the plaintiff's declaration herein is by the Court extended until March 20th.

Be it further remembered that on to-wit: March 19th, 1906, comes the defendant, The Southern Railway Company, by its attorneys, Claudian B. Northrup and Edward C. Kramer, and files its answer to the petition of the plaintiff herein, which is in the words and figures following, to-wit:

Answer. Filed March 19, 1906.

In the Circuit Court of the United States for the Eastern District of Illinois, Sitting as a Court of Law.

No. —, —— Term.

ST. LOUIS HAY & GRAIN COMPANY
vs.
SOUTHERN RAILWAY COMPANY.

To the Honorable the Judge of the Circuit Court of the United States within and for the Eastern District of the State of Illinois:

The answer of the Southern Railway Company to the petition in the above entitled cause, respectfully shows:

I.

Answering paragraph 1 of said petition Southern Railway Company has no knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and craves strict proof thereof.

27 II.

Answering paragraph 2 of said petition Southern Railway Company admits the allegations therein contained.

III.

Answering paragraph 3 of said petition Southern Railway Company admits that it maintains an office in the City of East St. Louis in the State of Illinois, within the Eastern District of the State of Illinois.

It denies so much of said paragraph as alleges that it committed at East St. Louis, Illinois, or elsewhere, the acts complained of and specifically referred to in Exhibits "A" "B" "C" attached to the petition herein.

IV.

Answering paragraph 4 of said petition Southern Railway Company admits the allegations therein contained.

V.

Answering paragraph 5 of said petition Southern Railway Company admits that the Interstate Commerce Commission forwarded to it a copy of petition filed before it by St. Louis Hay & Grain Company, same being marked Exhibit "A" and attached to petition herein, and the same set forth certain charges against Southern Railway Company.

Further answering said paragraph 5 Southern Railway Company admits that it filed before the Interstate Commerce Commission an answer to said petition denying the allegations as to violations of the Act to Regulate Commerce copy of said answer to said petition is hereto attached and marked Exhibit No. 1.

Further answering paragraph 5 Southern Railway Company admits that the Interstate Commerce Commission took testimony and investigated the complaint of St. Louis Hay & Grain Company and thereafter issued a document entitled "Report and Opinion of the Commission" copy of which is marked Exhibit "B" and attached to petition herein.

28 Further answering said paragraph 5 of said petition Southern Railway Company avers that while said Report and Opinion undertook to hold that Southern Railway Company had violated the provisions of the Act to Regulate Commerce in certain respects said holdings were contrary to all the evidence, and Southern Railway Company denies that it has in any manner whatsoever, violated any of the provisions of the Act to Regulate Commerce, and particularly denies that it has violated any such provisions in the respects set forth by the said Interstate Commerce Commission in its said Report and Opinion marked Exhibit "B" and attached to petition herein.

Further answering said paragraph 5 of said petition Southern Railway Company denies that the Interstate Commerce Commission made any findings of fact whatsoever in said Report and Opinion as required by law.

Southern Railway Company avers that the law requires that said Interstate Commerce Commission to show in its opinion or report what the issues in the case are, and what facts it finds with regard

to such issues and suitable references should be made to the evidence produced in regard to any particular question involved, all of which said Report and Opinion of said Commission fails to do as will be manifest to this Honorable Court upon an inspection of copy of said Report and Opinion.

Further answering said paragraph 5 of said petition Southern Railway Company avers that one of the issues raised by its answer to the petition filed before the Interstate Commerce Commission by St. Louis Hay & Grain Company was entirely ignored by said Interstate Commerce Commission and no findings or rulings whatever were made by said Interstate Commerce Commission in reference to said issue, same being the principle and most important issue presented to said Interstate Commerce Commission.

Southern Railway Company avers that in its said answer so filed before said Interstate Commerce Commission, copy of which is hereto attached and marked Exhibit No. 1, it distinctly alleged that St. Louis Hay & Grain Company as well as all other shippers of hay at East St. Louis were charged practically one cent less from East St. Louis to points of destination in Southeastern territory, such as Atlanta for instance, than the local rate from East St. Louis to Atlanta upon shipments of hay reconsigned at East St. Louis, that is to say,

29 that while the local rate from East St. Louis to Atlanta was 27 cents per 100 lbs., the reconsigning rate was only 26 cents per 100 lbs. between the same points of origin and destination, the same being in every respect a reasonable and just rate under all the circumstances for the services rendered.

Southern Railway Company avers that the charge of 26 cents per 100 pounds on hay reconsigned from East St. Louis to Atlanta fairly illustrates the situation in this case, and that same is less than the local rate of 27 cents per 100 pounds on hay from East St. Louis to Atlanta, and that same is proportional rate made by Southern Railway Company for the purpose of facilitating the movement of hay originating at points beyond East St. Louis, which hay has already borne a transportation charge when it reaches East St. Louis and is brought to the latter point by St. Louis Hay & Grain Company and other dealers for the purpose of reweighing, regrading, etc., and is made in the highest interests of trade and commerce. That the effect of the findings of the Interstate Commerce Commission is to compare a division or a proportion of a through rate with a strictly local rate and in contravention of the law which forbids all attempts to measure or condemn a through rate by reference to the local rate, and Southern Railway Company again avers that this issue, distinctly presented to the Interstate Commerce Commission in its answer, was wholly ignored by the Interstate Commerce Commission in this case.

Southern Railway Company further avers that the Interstate Commerce Commission committed the same error in considering the divisions or proportionals of through rates amounting to 2 cents and 4 cents per 100 lbs. respectively on hay from East St. Louis to some of the points on the Ohio River, said divisions or proportionals being 2 cents in some instances and 4 cents in others, according to

the circumstances and being altogether a matter of contract between the carriers concerned in the making of through rates which, under the law, is a right guaranteed to the carriers in the interests of commerce.

Southern Railway Company avers that said Interstate Commerce Commission not only ignored said issue, as already set forth, but based its decision wholly upon the consideration as to whether or not the additional cost involved in switching and placing cars, and the other extra expenses incident to reconsigning hay at East St. Louis amounted to more than 2 cents per 100 lbs., and that on this issue said Interstate Commerce Commission failed, as required by
30 law, to set forth in its said Report and Opinion references to evidence adduced in regard to this particular question.

Southern Railway Company further avers that on this question of extra cost incident to reconsigning and not to a strictly through shipment the great preponderance of evidence was taken before the Interstate Commerce Commission proves conclusively that the extra cost of reconsigning hay at East St. Louis amounted to more than 2 cents per 100 lbs, and Southern Railway Company avers that said extra cost, as compared with other shipments not reconsigned does not amount to more than 2 cents per 100 lbs.

Further answering said paragraph 5 of said petition Southern Railway Company avers that by referring to the Report and Opinion of said Interstate Commerce Commission at page 97, it will be seen that it finds that the car is actually in service from two to three days longer in the case of reconsigned carloads than in the case of other shipments, and page 98 of said Report and Opinion said Commission finds that the carriers themselves have agreed on 20 cents a day as the per diem charge which should be made for said cars and "we think that is enough when as in this case a car is not actually moved but standing still practically all the time." Upon which finding said Commission made an allowance of 60 cents for 3 days or at the rate of 20 cents a day for the use of the car.

Southern Railway Company avers that in the 16th Annual Report of said Interstate Commerce Commission, published December 15th, 1902, at page 80 thereof said Commission said that 20 cents per day was "ridiculously low" for the use of a car and that Southern Railway Company further avers nothing has occurred since said Interstate Commerce Commission so expressed itself in 1902 up to the time of the filing of said Report and Opinion May 15th, 1905 to convert the "ridiculously low" charge of 20 cents per day into a sufficient or reasonable remuneration for the use of a car and that nothing has occurred up to the present time to produce such a transformation.

Further answering said paragraph 5 of said petition Southern Railway Company avers that the per diem charge of 20 cents for a car is not and never has been made and agreed upon by Railways with any idea at all of revenue, but solely for the purpose of expediting the return of equipment to Railway Companies owning same, in the interest of the public and commerce as a whole,
31 and that when a car has remained on the rails of a line not owning same for more than 30 days a charge of $1.00 per

day is imposed against the delinquent line. That these rules have operated greatly to the benefit of commerce and have no relation whatever to revenue or remuneration but are merely made to create an incentive to return cars promptly so that the maximum equipment may be available to all shippers throughout the country; that all this is well known to the Interstate Commerce Commission and it is wholly improper and unfair and irrelevant to use or apply the charge of 20 cents per diem in connection with revenue or remuneration in any way whatsoever.

Further answering said paragraph 5 of said petition Southern Railway Company avers that said Commission committed an error of law in basing its Report and Opinion upon the theory that Southern Railway Company was not only entitled to charge and collect the actual cost of reconsigning hay at East St. Louis, and in not permitting Southern Railway Company to charge and collect a rate which would allow some profit for the use of its property and in payment for its service in reconsigning hay at East St. Louis for St. Louis Hay & Grain Company, and Southern Railway Company denies that the Interstate Commerce Commission, or any other Governmental Tribunal or Board has any power or authority to permit the use of its property or to compel it to furnish its service to any shipper at actual cost and without any profit at all, and that said Report and Opinion of said Interstate Commerce Commission deprives said Southern Railway Company of its property without due process of law contrary to the Fourteenth Amendment of the Constitution of the United States.

Answering paragraphs 6, 7 and 8 of said petition Southern Railway Company admits the allegations therein contained, and states that it has not complied with the order of said Commission mentioned in said paragraphs because the same is not a lawful order of said Commission.

Wherefore, Southern Railway Company prays that the petition herein be dismissed with costs, or that this case be referred back to the Interstate Commerce Commission to be proceeded with according to law.

CLAUDIAN B. NORTHRUP AND
EDW. C. KRAMER,
Solicitors for Southern Railway Company.

32 STATE OF MISSOURI, *City of St. Louis, ss:*

Personally appeared before me Thomas C. Powell, who on oath says that he is an officer of Southern Railway Company, to-wit, Fifth Vice President thereof, and that he has read the foregoing answer, and that the allegations therein contained are true to the best of his knowledge and belief.

THOMAS C. POWELL,
Fifth Vice-President.

Subscribed and sworn to before me this the seventeenth day of March, A. D., 1906, and I further certify that under the Laws of the

State of Missouri I am authorized to administer oaths. My commission expires 30th day of Sept., A. D. 1907.

[SEAL.] SAM'L B. McPHEETERS,
Notary Public.

EXHIBIT 1—ANSWER.

Copy.

Before the Interstate Commerce Commission.

THE ST. LOUIS HAY & GRAIN COMPANY
vs.
MOBILE & OHIO RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, LOUISVILLE & NASHVILLE RAILROAD COMPANY, and SOUTHERN RAILWAY COMPANY.

The separate answer of the Southern Railway Company shows:

I.

Answering paragraph 1 of the complaint, this respondent says that it has no knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and therefore craves strict proof thereof.

II.

It admits the allegations contained in Paragraph II of the complaint.

33 III.

It admits the allegations contained in paragraph III of said complaint.

IV.

It has no information or knowledge sufficient to form a belief as to the truth of the allegations contained in the fourth paragraph of said complaint in so far as same relates to various shipments made by complainant but in so far as said allegations refer to its tarriff for reconsignment, this respondent admits same.

V.

This respondent denies the allegations contained in paragraph V of said complaint.

Further answering paragraph V of said complaint this respondent alleges that the reconsignment privilege allowed at St. Louis and East St. Louis involves greater cost to this respondent and other railroad companies in the handling of said traffic than is incident to through shipment of same. For with reference to traffic which is reconsigned there is additional switching, greater delay of cars, extra expense in maintenance of clerical force required by taking up the expense bills of the carrier bringing the traffic to East St. Louis the issuance of new bills of lading, new way bills, etc., there is also

extra expense involved in reloading and also the increased probability of congestion in the freight yards, etc.

Further answering said paragraph this respondent alleges that the charge of reconsignment, is in all cases, practically one cent less than the rate from East St. Louis proper to the territory described in the complaint as "Southerstern points" and that this privilege of reconsignment is accorded to complainants and others at East St. Louis at a rate invariably less than the local shipper at East St. Louis would be called upon to pay for the transportation of hay originating at East St. Louis and destined to said "Southeastern points."

It is true that the reconsignment privilege at East St. Louis is granted upon the condition that a somewhat greater rate shall be charged than the through rate from the point of origin to the
34 point of destination when reconsignment is not availed of but the benefits to the shipper and the additional expense and trouble entailed upon the carriers fully justify the slight additional charge.

(Sgd.) FAIRFAX HARRISON,
CLAUDIAN B. NORTHRUP,
Solicitors for Southern Railway Company.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Personally appeared before me on this 2d day of July, 1904, Thomas C. Powell, who on oath says that he is an officer of the Southern Railway Company and that he has read the foregoing answer and that the allegations therein contained are true to the best of his knowledge and belief.

(Sgd.) T. C. POWELL,
Frt. Tr. Mgr. Southern Ry.

Sworn to before me this 2d day of July 1904.

(Sgd.) WM. M. NETHERLAND,
[SEAL.] *Notary Public.*

(Endorsed:) #107. Answer of Southern Ry. Co. Filed March 19, 1906, Daniel Hogan, Clerk.

Be it further remembered that afterwards on, to-wit: May 8, 1906, comes the plaintiff herein by its said attorneys and files its replication to the answer of the defendant to the plaintiff's petition, which is in the words and figures following, to-wit:

35 *Replication. Filed May* 8, 1906.

In the Circuit Court of the United States for the Eastern District of Illinois, Sitting as a Court of Law.

No. ——, —— Term.

ST. LOUIS HAY & GRAIN COMPANY
vs.
SOUTHERN RAILWAY COMPANY.

Plaintiff's Replication to Defendant's Answer.

Forman & Whitnel, Attorneys for Petitioners.

The Replication of the Above-named Plaintiff to the Answer of the Above-named Defendant.

This replicant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendant, for replication thereunto sayeth that it does and will ever maintain and prove its -aid petition to be true, certain, and sufficient in the law to be answered unto by said defendant, and that the answer of said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this replicat*n*; without that, that any other matter or thing in the said answer contained or effectual in the law to be replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly as in and by its said petition it has already prayed.

FORMAN & WHITNEL,
Attorneys for Petitioner.

(Endorsed:) Law 107. In the U. S. Circuit Court for the Eastern District of Illinois. May Term A. D. 1906. St. Louis Hay & Grain Co. *vs.* Southern Railway Company. Replication. Filed May 8, 1906, Daniel Hogan, Clerk. Forman & Whitnel, Attys. for Plff.

36 Be it further remembered that afterwards on, to-wit: April 3, 1906, the following further order of court was made and entered of record in said cause, to-wit:

Order of April 3, 1906.

No. 107.

ST. LOUIS HAY & GRAIN COMPANY
vs.
SOUTHERN RAILWAY COMPANY.

And now on this day, this cause is by the order of the court set for trial at East St. Louis, May 15, 1906.

And on, to-wit: May 8th, 1906, the following further order of court was made and entered of record in said cause, to-wit:

Order of May 8, 1906.

No. 107.

ST. LOUIS HAY & GRAIN COMPANY
vs.
SOUTHERN RAILWAY COMPANY.

And now on this 8th day of May, 1906, comes the plaintiff in this cause by Forman & Whitnel, its attorneys, and on motion duly made in open court is by the court given leave to amend its petition herein.

Be it further remembered that to-wit, on May 15, 1906, the following proceedings were had and entered of record in said cause in said court, to-wit:

Trial, May 15, 1906.

No. 107.

ST. LOUIS HAY & GRAIN COMPANY
vs.
SOUTHERN RAILWAY COMPANY.

Now on this 15th day of May, 1906, comes the parties to this cause, the plaintiff and defendant, respectively, by their respective attorneys and present a stipulation in writing properly signed by the respective parties, waiving a trial by jury in this cause and agreeing that the issue joined shall be tried by the court. Whereupon the trial proceeds and evidence is heard, And now at the close of the day this trial not having been concluded, it is continued until tomorrow.

37 Be it further remembered that to-wit, on May 16, 1906, the following proceedings were had and entered of record in said cause in said court, to-wit:

Trial, May 16, 1906.

No. 107.

ST. LOUIS HAY & GRAIN COMPANY
vs.
SOUTHERN RAILWAY COMPANY.

Now on this 16th day of May 1906, come again the parties to this suit by their respective attorneys, into open court, and the trial of this cause proceeds and the evidence adduced by both the plaintiff

and defendant is heard and concluded. And the argument of this cause is, by agreement of the respective parties hereto, postponed until June 18, 1906, at Danville, Illinois.

Be it further remembered that on, to-wit: June 25th, 1906, the following further proceedings were had and entered of record in said cause in said court, to-wit:

Finding of Court, June 25, 1906.

No. 107.

ST. LOUIS HAY & GRAIN COMPANY
vs.
SOUTHERN RAILWAY COMPANY.

And now again come the parties to this suit, plaintiff and defendant, by their respective attorneys, and the court having heretofore heard the arguments of counsel for the respective parties and taken the cause under advisement, and the court now being fully advised in the premises on consideration thereof doth find that on the hearing of this cause before and by the Inter State Commerce Commission, the said Commission found in its report and opinion in substance the following facts.

1. Large quantities of hay produced in territory east, north and west of East St. Louis are consumed in Southeastern Territory and much of it is carried through the East St. Louis gateway and passes over defendant's lines of railway from East St. Louis to points south of the Ohio river. With the exception of the Illinois Central, defendant's lines terminate at East St. Louis, and generally, also lines of railway over which the hay is carried from said producing points to East St. Louis terminate at that point.

2. For the transportation from East St. Louis to said
38 Southeastern points defendants apply a proportional rate which is 2 cents per 100 pounds greater than the rate to said Southeastern points from the Ohio River, if the hay is not unloaded at a warehouse in East St. Louis, regardless of whether or not the hay is shipped locally to East St. Louis or through-billed from the point of origin to the point of final destination, and regardless of provisions in their tariffs concerning through billing; but if the hay is unloaded at a warehouse in East St. Louis defendants exact- for the transportation thereof from East St. Louis to said Southeastern points a rate which is 4 cents per 100 pounds greater than the rate from the Ohio River to said Southeastern points.

3. Complainant operates two warehouses at East St. Louis, and most of the hay it handles it purchases on the track at East St. Louis, unloads, inspects, assorts and reloads at said warehouses, and sells at said Southeastern points, in competition with other hay dealers who do not unload the hay at East St. Louis. In such competition complainant is therefore prejudiced to the extent of 2 cents per 100 pounds by defendant's method of applying rates of transportation

as aforesaid. Defendants claim this 2-cent difference in rates is justified by difference in cost to them between the two kinds of transportation services they are called upon to perform.

4. At East St. Louis, transfers of loaded cars from the northern to the southern lines and transfers of empty cars from the southern to the northern lines are generally made by a connecting railroad company, and the charge made by that company for such service is $4 per car when the hay is unloaded as aforesaid, but only $2 per car when the hay is not so unloaded, and in each instance this charge is paid by the carrier which hauls the hay south from East St. Louis.

5. When the hay is unloaded as aforesaid an empty car must be furnished for the shipment by the carrier which hauls the hay south from East St. Louis, and the service of so furnishing is fairly worth from 40 to 60 cents per car.

6. The car is in use from 2 to 3 days longer when the hay is unloaded as aforesaid than when it is not so unloaded, and a fair compensation for such use is 20 cents per day.

7. When hay is unloaded and reloaded at warehouses as aforesaid the time consumed in doing the work averages from 6 to 8 hours, but the expense of such unloading and reloading is borne entirely by the shipper.

39 8. Shipments of hay to which the rate of 2 cents per 100 pounds above the rate from the Ohio River is applied as aforesaid, and which are not unloaded at East St. Louis warehouses, are frequently transferred from one car to another in the railroad yards at East St. Louis, either because cars in which the hay is shipped to East St. Louis from the north are out of repair, or because the northern lines are not willing to allow cars to go south from East St. Louis. The expense of such transfer is from $1.25 to $1.50 per car, and this expense is entirely borne by the carrier which hauls the hay south from East St. Louis.

9. The transfer charge of $4 per car above mentioned was formerly $3 per car, and the transfer charge of $2 per car above mentioned was formerly $1.50 per car.

10. The weight of hay in cars shipped as aforesaid from East St. Louis to Southeastern points is from 1,000 to 2,000 pounds greater when the hay is reloaded at East St. Louis warehouses than when it is not so reloaded. This is an advantage in favor of the reconsigned hay.

11. Cars from the north, after being unloaded at warehouses as aforesaid, are frequently reloaded for the south, thus avoiding expense to the southern line of placing an empty car and subtracting perhaps a day from the additional time of the car service.

12. That, taking every thing into account, the average additional expense to southern lines in case of recognsigned hay will not exceed that of direct through shipments by more than from $2 to $2.50 per car, which is equivalent on the average loading of hay to about 1 cent per 100 pounds

13. Much of the hay which actually passes through East St. Louis might reach its southern destination via other gateways. Hay grown in different sections also competes via these other gateways

in the south with that which does or might pass through East St Louis. These gateways are Cincinnati, Louisville, Evansville, Cairo, Memphis, Nashville, and perhaps others. The testimony showed that at all these points hay could be stopped off, unloaded, and treated as the complainant handles its hay at East St. Louis, without the imposition of any charge in addition to the through rate. The testimony showed that these markets all competed with East St. Louis, but the force of that competition did not appear.

40 14. That complainant actually paid to the Southern Railway Company on reconsigned shipments of hay, at the rate of 2 cents per 100 pounds, the difference between the reconsigning rate and the rate on hay not reconsigned, the sum of $3,144.17.

And from all the evidence heard and adduced on the trial of this cause in this court, the court finds that the said findings of fact by the said Inter State Commerce Commission are supported and justified by the said evidence and,

It is ordered that the said findings of fact as above recited and set out be, and the same are adopted as the special findings of fact of the court and that the same be set out in the record of this court accordingly.

Judgment, June 25, 1906.

It is therefore considered, ordered and adjudged by the court that the plaintiff herein have and recover of the defendant herein the sum of on thousand six hundred fifty nine and 41/100 ($1659.41) Dollars, the same being the amount of reparation awarded by the said commission to the plaintiff against the defendant with five per cent. interest from the date of said award, and it is further ordered and adjudged by the court that the plaintiff have and recover of the defendant its costs herein to be taxed, including a reasonable attorney's fee to be hereafter fixed, and that execution issue against the defendant for the amount of the said judgment and the said costs.

It is further ordered that the defendant have sixty days from this date in which to present a bill of exceptions if it shall be so advised.

41 Be it further remembered that on, to-wit: July 21st, A. D. 1906, the following further proceedings were had and entered of record in this court in this said cause, to-wit:

Orders of July 21, 1906.

No. 107.

ST. LOUIS HAY & GRAIN COMPANY
vs.
SOUTHERN RAILWAY COMPANY.

Reparation.

Now on this day, Saturday, July 21st, A. D. 1906, the same being a judicial day of the March term of the United States Circuit Court

for the Eastern District of Illinois, come the parties to this cause, the plaintiff and the defendant respectively, by their respective attorneys, into open court, and the plaintiff enters his motion for the court to fix his attorney's fees, and for the same to be taxed as costs in this suit. And the Court having heard the arguments of counsel and being fully advised in the premises sustains the said motion. The court thereupon fixes the plaintiff's attorney's fee at Three Hundred Fifty ($350.00) Dollars, and orders that the same be taxed as costs against the defendant.

And now comes the defendant, by its attorneys, and enters its motion for a new trial and for the court to set aside the special findings and the judgment heretofore entered herein. And the court now having heard the arguments of counsel and being fully advised in the premises, overrules the said motion.

Be it remembered that on the hearing of said cause the following evidence was produced, offered and heard on the part of the respective parties, together with the exhibits therein referred to.

42 *Bill of Exceptions.*

ST. LOUIS HAY & GRAIN COMPANY
vs.
SOUTHERN RAILWAY COMPANY.

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T. C. Powell	10	63
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Joseph M. Denyven	84	86
Robert L. McKellar	91	102
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For Petitioner:		
T. C. Powell	165	
James W. Dye	166	181
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44 In the United States Circuit Court for the Eastern District of Illinois, to the May Term, A. D. 1906.

ST. LOUIS HAY AND GRAIN COMPANY, Petitioner,
vs.
SOUTHERN RAILWAY COMPANY, Defendant.

Suit to Collect Reparation Fixed by Order of Inter-state Commerce Commission.

Appearances:
For the Petitioner: Messrs. L. O. Whitnel and P. J. Farrell.
For the Defendant: Messrs. E. C. Kramer and C. B. Northrup.

And now, Be it remembered, that on the trial of this cause at this term, the Honorable F. M. Wright, Judge of the United States Circuit Court for the Eastern District of Illinois, presiding, the Petitioner, to sustain the issues on its part, introduced the following evidence, that is to say:

Stipulation.

UNITED STATES OF AMERICA,
State of Illinois, ss:

In the U. S. Circuit Court for the Eastern Dist. of Ill., to the May Term, A. D. 1906.

ST. LOUIS HAY & GRAIN COMPANY
vs.
SOUTHERN RAILWAY COMPANY.

Petition to Enforce Order of the Interstate Commerce Commission.

It is hereby stipulated and agreed by and between the parties to the above entitled suit that a jury be and the same is hereby waived and that the said cause shall be tried by the Court.

It is further stipulated and agreed that the petitioner may
45 make any proper and competent amendment to his petition or to the exhibits thereto before the commencement or during the trial of the cause and that the defendant may make any proper and competent amendment to its answer before the commencement or during the trial of said cause, so that the issues involved in the case may be fairly presented to the Court.

It is further agreed by and between the parties that the petitioner, St. Louis Hay & Grain Company, is a corporation organized under the laws of the State of Illinois with its principal office in the City of East St. Louis in the said State of Illinois and in the Eastern District of the said State of Illinois; that the reparation for which this proceeding is instituted pertains to shipments of hay made by the peti-

tioner between June 1st, 1903, and February 1st, 1905, from the City of East St. Louis to points outside of the State of Illinois and east of said State of Illinois and that the rates paid as freight on said shipments are as found by the Interstate Commerce Commission in its decision filed as an exhibit to the petition of the petitioner in this suit.

It is further stipulated and agreed that upon the trial of this cause either party shall have the right to read in evidence the statements of witnesses made before the Interstate Commerce Commission, as shown by the transcript of the evidence taken upon the hearing before said Commission, the introduction of such statement of said witnesses to be subject to the objection of the opposite party, based upon any valid or legal objection to the introduction of the same.

Dated this the 15th day of May, A. D. 1906.

FORMAN AND WHITNEL,
Attorneys for Petitioners.
CLAUDIAN B. NORTHRUP,
EDW. C. KRAMER,
Attorneys for Defendant.

Petitioner offers in evidence, as Exhibit "A," the petition of the complainant, St. Louis Hay & Grain Company *vs.* Mobile & Ohio Railroad Company; Illinois Central Railroad Company; Louisville and Nashville Railroad Company; and Southern Railway Company, before the Interstate Commerce Commission. Said paper is made a part of the record in this case, and is in words and figures as follows, to-wit:

46 EXHIBIT "A."

Exhibit A—Petition.

Before the Interstate Commerce Commission.

ST. LOUIS HAY & GRAIN COMPANY
v.
MOBILE & OHIO RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, LOUISVILLE & NASHVILLE RAILROAD COMPANY, and SOUTHERN RAILWAY COMPANY.

The petition of the above named complainant respectfully shows:

I. That complainant is a corporation existing under the laws of the State of Missouri; that its principal office and place of business is located at St. Louis in that state; and that it is engaged in the purchase, shipment and sale of hay.

II. That the above named defendants are common carriers engaged in the transportation of property by railroad between East St. Louis, Illinois, on the one hand, and points in States of the United States situated south of the States of Kentucky and Virginia and east of the Mississippi River, which will be called hereinafter "southeast-

ern points," on the one hand; and as such common carriers are subject to the provisions of the Act to regulate commerce, approved February 4, 1887, and acts amendatory thereof or supplementary thereto.

III. That defendants have adopted and maintain in force upon their respective lines of railway schedules of rates and charges wherein and whereby it is provided that the charges exacted for transporting hay in carloads over said lines, respectively, from East St. Louis to said southeastern points, shall be 2 cents per 100 pounds in addition to the regular established rates for transporting hay in carloads from Cairo, Illinois, to said southeastern points, when the shipments originate at points on railroads other than those of defendants and are not reconsigned at East St. Louis, and 4 cents per 100 pounds in addition to such established rates when the shipments are reconsigned at East St. Louis; that is to say, 2 cents per 100 pounds is exacted in each instance by defendants, respectively, for the privilege of reconsignment at East St. Louis.

IV. That complainant made shipments of hay in carloads
47 over defendants' lines of railway, as described in Schedule A hereto attached and made a part hereof, on or about the dates mentioned in said schedule, from East St. Louis to said southeastern points; that said shipments were reconsigned at East St. Louis; and that defendants exacted for the transportation thereof, as described in said Schedule, 4 cents per 100 pounds in addition to such established rates between Cairo and said southeastern points, while they contemporaneously severally transported, in carloads, hay that was not reconsigned at East St. Louis, for other shippers and between exactly the same originating and destination points, for 2 cents per 100 pounds in addition to said established rates between Cairo and said southeastern points,

V. That the cost to defendants, respectively, in each instance, of transporting such shipments from East St. Louis to said southeastern points, is the same whether the shipments are reconsigned at East St. Louis or not; that the higher transportation charge hereinbefore described is unreasonable; and that by reason of the premises each of said defendants has subjected, and still is subjecting, complainant and its traffic to the payment of unreasonable and unjust rates of transportation and to undue and unreasonable prejudice and disadvantage, and has given, and still is giving, to said other shippers and their traffic undue and unreasonable preference and advantage, in violation of the provisions of the Act to regulate commerce, particularly Sections 1, 2 and 3 thereof.

Wherefore complainant prays that said defendants may be severally required to answer the charges herein; that after due hearing and investigation an order be made requiring each of said defendants to cease and desist from the aforesaid violations of said Act to regulate commerce, and pay to complainant such a sum of money by way of damages as, in view of the evidence to be adduced herein, the Commission may deem complainant entitled to; and that such other and further order or orders may be made as the Commission

may consider necessary in the premises and complainant's cause may appear to require.

Dated at St. Louis, Missouri, May 27th, 1904.

ST. LOUIS HAY & GRAIN COMPANY,
By FRED DEIBEL,
President and Treasurer.

48 The petitioner also offers in evidence the Report and Opinion of the Commission in the case of St. Louis Hay & Grain Company *vs.* Mobile & Ohio Railroad Company; Illinois Central Railroad Company; Louisville & Nashville Railroad Company; Southern Railway Company; decided May 15th, 1905.

The defendant objects to the introduction of said Report and Opinion for the following reasons:

1. Because the Commission in said Opinion did not pass upon the issues presented to it in said cause.

2. Because the issues in said case presented the questions of the reasonableness and justness of the reconsigning rate complained of on hay from East St. Louis to Southeastern points which said issue was material and one of the principle issues in said cause, and was not passed upon and determined by said Interstate Commerce Commission.

3. Because said Report and Opinion of said Commission does not find the facts involved in said matter before said Commission as required by Section 16 of the Act to Regulate Commerce.

4. Said Report and Opinion cannot be introduced as prima facie evidence of any matters involved before said Commission because the facts are not found by the Commission as required by the Act to Regulate Commerce.

5. Because said Report and Opinion fails to show what the issues in the case before the Interstate Commerce Commission were, and what facts the Commission found in regard to such issues and said Report and Opinion fails to make suitable reference to the evidence adduced before the Interstate Commerce Commission, in regard to any particular question where there was a conflict of evidence showing how the Commission settled any disputed fact; and because said Report and Opinion fails to state as a fact whether or not there was any undisputed evidence in reference to any of the facts.

6. Because said Report and Opinion of the Commission is wholly irrelevant to the issues made by the pleadings before this Court in this case and makes no reference whatever to the main and material issue in this cause, to-wit, the reasonableness and justness of the reconsigning rate from East St. Louis to Southeastern points.

7. Because said Report and Opinion cannot be introduced as *prima facie* evidence of any matter involved in this suit.

49 But the Court overruled said objection to which action of the Court in overruling said objection, the defendant, by its attorneys then and there excepted.

This paper is marked Exhibit "B", is made a part of the record in this case, and is in words and figures as follows, to-wit:

EXHIBIT "B."

Exhibit B—Report and Opinion of the Commission.

Before the Interstate Commerce Commission.

No. 757.

ST. LOUIS HAY & GRAIN COMPANY
v.
MOBILE & OHIO RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, LOUISVILLE & NASHVILLE RAILROAD COMPANY, and SOUTHERN RAILWAY COMPANY.

Decided May 15, 1905.

Jas. W. Dye for complainant.
Ed Baxter for M. & O. R. R. Co., I. C. R. R. Co. and L. & N. R. R. Co.
Ed Baxter, E. C. Kramer and C. B. Northrup for So. Ry. Co.

Report and Opinion of the Commission.

50 Interstate Commerce Reports.

No. 757.

ST. LOUIS HAY & GRAIN COMPANY
v.
MOBILE & O. R. CO. ET AL.

ST. LOUIS HAY & GRAIN COMPANY
v.
MOBILE & OHIO RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, LOUISVILLE & NASHVILLE RAILROAD COMPANY, and SOUTHERN RAILWAY COMPANY.

Decided May 15, 1905.

1. Stopping a commodity in transit to treatment or reconsignment is in the nature of a special privilege which the carrier may concede, but which the shipper, under the present state of the law, cannot demand as a matter of lawful right; but carrie-s may not unjustly discriminate between markets or individuals in the granting of such privileges.
2. In allowing the privilege of reconsigning hay at East St. Louis to southern destinations, defendants are entitled to charge for such privilege what it actually costs them; and the fair average cost to the carrier when complainant or others handle the hay through warehouses at East St. Louis, over and above the cost of handling in East St. Louis a through ship-

ment via East St. Louis to southern destinations, is $2 to $2.50 per car, or approximately 1 cent per 100 lbs. Shipments routed through East St. Louis are carried from that point to southern destinations at a proportional rate, which is 2 cents per 100 lbs. above the rate from Ohio River crossings to the same destinations. Hay reconsigned to such points from warehouses in East St. Louis is charged 4 cents per 100 lbs. above the Ohio River rate. Hay appears to be reconsigned from warehouses at Ohio River points, and at Nashville and Memphis, to southern points without additional charge.

Held, upon all the facts, that defendant's rates on reconsignments of hay from warehouses in East St. Louis to points south
51 of the Ohio River, amounting to 2 cents more than their proportional rate from East St. Louis on through shipments, are unjust and unreasonable, and that complainant is entitled to reparation.

Jas. W. Dye for complainant.

Ed. Baxter for M. & O. R. R. Co., I. C. R. R. Co. and L. & N. R. R. Co.

Ed. Baxter, E. C. Kramer and C. B. Northrup for So. R'y Co.

Report and Opinion of the Commission.

PROUTY, *Commissioner:*

The defendants in this proceeding are the Mobile & Ohio Railroad Company, the Illinois Central Railroad Company, the Louisville & Nashville Railroad Company, and the Southern Railway Company. They all operate lines of railroad leading from East St. Louis, Illinois, to points south of the Ohio River and east of the Mississippi, and all engage in the transportation of various commodities from that point to the territory above defined. The defendants all have in effect what they term proportional rates on hay which is received at East St. Louis by them from their connections. These proportional rates to southeastern points are two cents above the rate from the Ohio River when the shipment is made directly through East St. Louis, but if the hay is "reconsigned" at East St. Louis the charge is 4 cents above the Ohio River rate: It is the imposition of this additional two cents for the privilege of reconsigning to which the complainant takes exception.

Large quantities of hay produced in territory east, north and west of East St. Louis are consumed in southeastern territory. This hay can and frequently does reach its destination through some other gateway than East St. Louis, but much of it can be and is carried through that gateway. Of the defendant lines, the Illinois Central reaches north of East St. Louis but the other three lines terminate here. The lines of railway bringing this hay from the point of origin also terminate as a rule at East St. Louis. For the purpose of establishing a basis of through rates upon which business may be transacted and by which it will be attracted to the lines of the

defendants at East St. Louis, these proportional rates have been put into effect.

The tariffs of some of, if not all, the defendants contem-
52 plate the application of this proportional rate only to ship-
ments which are in fact through billed from the point of origin to destination. If this rule were strictly applied, hay shipped locally to East St. Louis and afterwards sent on, even though not unloaded, should pay a rate of 4 cents above that from the Ohio River. This, however, is not the practical interpretation which the carriers themselves have put upon these tariffs. In point of fact, if a carload of hay is consigned to East St. Louis locally upon the local rate, and the consignee of that carload determines upon its arrival in East St. Louis to send it directly forward, he may do so by paying to the line which brings it into St. Louis what is called a reconsigning charge of $2 per car. This line upon receiving directions from the consignee will deliver the car to the proper southern line, which receives it and carries it on as a through shipment. The southern lines actually know that carloads of hay received by them at the so-called through proportional rate have been shipped into St. Louis upon the local rate. In other words, they do not inquire, and make no distinction between hay which has been billed from the point of origin to some point south of the Ohio River and hay which has been billed locally into St. Louis and reconsigned at St. Louis without being removed from the car. If, however, the hay is unloaded by the owner at St. Louis, a rate 4 cents above the Ohio River rate is always imposed.

East St. Louis is an important hay market, to which large quantities of hay are shipped for sale. This hay is usually consigned to commission merchants who sell it upon inspection in the car in which it arrives. The purchaser frequently unloads it at East St. Louis for consumption there. He sometimes ships it forward in the original car to the southeastern point. More often when intended for southeastern territory it is taken to a warehouse and unloaded for the purpose of grading, assorting and reloading.

The complainant is a corporation under the laws of the State of Illinois with its principal office at St. Louis, Mo., engaged in the business of handling hay, in course of which it operates two warehouses at East St. Louis. While the complainant buys to some extent from the producer in the country, its principal business seems to be the purchasing of hay on the track from commission men at
East St. Louis, which it sends for the most part into this
53 southeastern territory. It may occasionally send forward a
car without unloading; most of its hay is taken to its warehouses, there unloaded, inspected, assorted, and reloaded for the southern markets. It will be seen, therefore, that the practical effect of this reconsigning rule is to permit the track buyer at East St. Louis, who sends the carload which he purchases directly through without unloading, to do so at a rate two cents better than that paid by the complainant, who puts his hay into the warehouse. The evidence fairly shows that the privilege of unloading is of value to the complainant, but how valuable does not appear.

The defendants justify the imposition of this higher charge where the hay is taken to a warehouse and unloaded, as in the case of the complainant, by the additional cost which that mode of handling entails. The complainant insists that the cost of the service to the carrier is no greater in that case that in the other and that, therefore, the imposition of this charge is unreasonable. The important question of fact would seem to be, does this additional service impose an additional burden upon the carriers, and, if so, what is the fair amount of the increased expense?

Anything like an exact determination of this is rendered impossible by the complicated conditions at East St. Louis. Mr. Snell, the representative of the Wiggins Ferry Company, testified that as a rule northern lines had no physical connection with southern lines, so that, ordinarily, cars must be switched by some belt line, of which there seem to be several, in making the connection. Some lines from the South make more physical connections than others, and the Southern Railway appears to own one of the belt lines through which it forms a connection with every railroad entering East St. Louis from the North. The warehouses at which hay is handled are situated sometimes upon one line of railway and sometimes upon another. It is evident, therefore, that the cost to a particular railroad of permitting this unloading of hay at East St. Louis would vary with the line by which the hay arrived from the North and with the location of the warehouse at which the hay was handled. Every line must, however, put itself upon an equality with its competitor and the fact that some particular line is obliged to make an absorption in the case of reconsigned business which it does not make in case of through business is no reason why that absorption should be counted as a part of the expense of reconsignment
54 in general. The attempt should be rather to arrive at a fair estimate of the average cost.

Perhaps this can be best done by taking the warehouse of this complainant as an example. This warehouse is located upon the tracks of the Southern Railway and also upon those of the Wiggins Ferry Company, one of the belt lines which make connections, as we understand it, between all incoming and outcoming railroads.

The Southern Railway, as already stated, makes connection with all northern lines, and therefore a carload of hay arriving by any road from the North or West might reach the storehouse of the complainant in two ways; namely, via the Southern Railway and via the Wiggins Ferry lines. Let us assume, first that it is sent there by the Wiggins Ferry route.

The cost to the in-road of delivering this carload may be assumed to be the same whether it is turned over to the Wiggins Ferry Company to be sent to the storehouse of the complainant, or to be switched to some connecting line for through shipment. There is, therefore, up to the point of its receipt by the Wiggins Ferry Company no difference of expense between the two transactions. The Wiggins Ferry Company switched the car to the storehouse of the complainant and takes out the empty, as we understand the testimony, for a charge of $2.00 per car. When, Now, this hay goes to

the South the Southern Railway sets in an empty car at the storehouse of the complainant and takes out the loaded car. It may be fairly assumed that the service of taking transportation south entails on the average, the same expense as would be entailed in taking the through car from the northern connection and placing that in its train. The difference in service performed by the southern road in the two cases consists, therefore, in setting an empty car at the storehouse of the complainant. This service in our opinion is fairly worth from 40 to 60 cents.

When this complaint was filed, the complainant, in a transaction like that above detailed, paid the charge of the Wiggins Ferry Company, which was then $1.50. Since the first hearing of this case that charge has been increased to $2.00, and is now absorbed, owing to certain competitive conditions, by the line carrying the traffic south, in this instance the Southern Railway.

Let us assume, now, that the carload of hay, instead of being delivered to the Wiggins Ferry Company is delivered directly to the Southern Railway. That company takes the car and places
55 it in its southbound train in case of through shipment, but switches it to the warehouse of the complainant if it is to be unloaded. The same service in taking the car out from the warehouse must be performed as before. We may assume again, that the cost to the Southern of placing the car in its train is the same when received from the northern road as when taken from the northern road as when taken from the storehouse of the complainant, so that the additional expense to the Southern line is the switching of the loaded car to the storehouse of the complainant, the moving of the empty car back to the northern line, and the moving of the empty car for its southbound load to the storehouse. The testimony fairly shows that the cost of switching the loaded car to the storehouse and taking the empty out would not exceed $2.00. Inasmuch as the complainant company can in any case obtain that service for $2.00, and inasmuch as the Southern Railway itself would only be compelled in that event to absorb $2.00, it would be unfair, certainly, to charge the complainant more.

It would seem, therefore, that in case of the complainant's warehouse when shipment south is made via the Southern road the additional cost to the Wouthern would not exceed about $2.50. This does not include the additional time which the car is in service, and which will be referred to later.

Let us assume, now, that the shipment south is made not by the Southern, but by the Louisville & Nashville, and that it arrives by the Wabash, which has no physical connection with the Louisville & Nashville. If the carload of hay is delivered directly to the Louisville & Nashville it must be done by the Wiggins Ferry Company, or by some other belt line, for which the charge would be $2.00, which the Louisville & Nashville absorbs. If it goes to the complainant's warehouse, it is delivered to the Wiggins Ferry Company, and switched to the warehouse at an expense of $2.00. The service, therefore, of the Wabash Railroad and the Wiggins Ferry Company is exactly the

same whether the car is delivered for through shipment of taken to the complainant's storehouse.

When, now, the car is sent forward application is made to the Louisville & Nashville for an empty, which is delivered to the Wiggins Ferry Company. That company now takes the empty to the storehouse and the loaded car from the storehouse, delivering the latter to the Louisville & Nashville. The cost to the Louisville & Nashville of putting that loaded car into its train is exactly the same whether it is received from the Wiggins Ferry Company
56 as a through shipment of whether it is received as a reconsigned shipment; but in the latter case there is the additional expense of moving an empty car to the Wiggins Ferry Company. At the present time the Louisville & Nashville absorbs both the switching service to and the switching service from the storehouse of the complainant, and therefore, it pays by way of absorption $4.00 in case of the reconsigned shipment, while it pays but $2.00 in case of the through shipment. That is, the additional expense to that road is $2.00 plus the expense of switching its empty car to the Wiggins Ferry Connection, or, as in case of shipment out by the Southern, approximately $2.50 per car.

The Louisville & Nashville makes direct connection with several northern lines, and if the hay had reached St. Louis over one of these lines there would have been no switching charge involved in case of the through shipment, so that the additional switching charges absorbed would be $4.00 in case of the reconsignment as against nothing in case of the through shipment. But we have already seen that as a rule southern lines do not possess these physical connections. The Louisville & Nashville absorbs $4.00 instead of $2.00, because the complainant's warehouse being upon the Southern road it can ship its hay to any southeastern point via that line without payment of the switching charge. It is immaterial to it whether it makes shipment by the Southern or the Louisville & Nashville. It ought not, therefore, to be charged with this expense if the Louisville & Nashville sees fit to incur it in order to obtain its business.

If, instead of considering the warehouse of the defendant, we were to select one situated upon some inbound line instead of an out-bound line the result would be apparently the same. Presumably the in-line can make delivery at the warehouse as cheaply as to the connecting carrier. When the car is switched out, the in-line must obtain an empty car from its southern connection, transport that car to the warehouse and the loaded car back, the cost of which would not be over $2.00. This charge would ordinarily be assumed by the southern line in case of the reconsigned shipment. Here, again, therefore, the out-line would be to the same additional expense of $2.00 per car plus the cost of delivering the empty car by the southbound line to the northern line for its load.

While circumstances may be easily imagined where par-
57 ticular lines incur a greater added expense than that above indicated, it is believed that this fairly states the situation with respect to the shortest and cheapest route through East St. Louis in the great majority of cases, if not in all cases, and that $2.50

per car fully covers the expense so far as these elements are concerned. It was said in testimony that these figures allowed nothing for maintenance of track, etc. The charge for switching at East St. Louis had been, until October 1, 1904, $1.50 per car, and that included the cost of their tracks and the maintenance. We apprehend that the figures above given would be a liberal estimate for the service covered, including all items of expense which can be properly charged against it. Substantially the same tracks are required in case of the through car which are needed in case of the reconsigned car. There is, however, one element which has not been taken into account in determining this additional expense, and that is the use of the car itself.

The testimony tends to show that the car is actually in service from two or three days longer in case of reconsigned carloads than in case of through shipments. The complainant denies this and introduces testimony tending to show that cars are promptly loaded at its warehouse, the time consumed being not ordinarily in excess of six to eight hours. It urges that if there is delay it is not with it, but upon the lines of carriers, for which it is not responsible and ought not to be chargeable. It does seem to us that the outside figures given by the defendants are probably too high, but the delay in moving cars in yards more or less congested like those at East St. Louis is necessarily considerable and we think it fairly appears that an additional time of two or three days is required, and that the defendants are fairly entitled to compensation for the use of the car for this period. We do not agree, however, with the estimate put by the witnesses of the defendants upon the value of this service. Two of these witnesses estimate that a freight car is worth $1.50 per day. In our opinion there is no warrant for any such claim. The Commission has of late investigated the subject of private cars. It is claimed and generally believed that the returns to the owners of these cars are altogether excessive, yet that testimony disclosed the fact that the earnings from a stock car did not exceed from $6.00 to $8.00 per month, that the earnings from a refrigerator car under the most favorable circumstances did not exceed from $12.00 to $18.00 per month. The demurrage charge is only $1.00 a day, and that is imposed not on the basis of a fair *quantum meruit*, but as a pen-
58 alty to secure the prompt release of the car. The carriers themselves have agreed on 20 cents a day as the per diem charge which should be made, and we think that is enough when, as in this case, the car is not actually moving but standing still practically all the time. In our opinion an additional allowance of 60 cents may properly be made on this account.

To offset this additional burden in case of reconsigned shipments are certain advantages. While it frequently happens that carloads of hay are sent through to destination in the same cars in which they reach East St. Louis, we think the rule is probably otherwise. In times of car shortage, northern lines insist that the hay shall be transferred at East St. Louis from their cars to the cars of southern lines. While the testimony in this case does not show definitely the extent to which that is done, it fairly appears that it is done in many

cases. The cost of the transfer is in the vicinity of $1.25 per car. It must also require in the placing of the cars and the making of the transfer one and probably on the average two days. Here is, therefore a saving in case of reconsigned hay to the carriers of approximately $1.50 per car whenever the transfer must otherwise be made by them. In addition to that, the testimony shows that when cars are loaded at the warehouse they can always be loaded to their maximum capacity, whereas it often happens that otherwise the load is less than it might be. This difference would often amount to 1,000 to 2,000 pounds, and this again is an advantage in favor of the reconsigned hay.

It should be still further noted that cars from the North after being unloaded at the warehouse of the complainant are frequently reloaded for the South, thus avoiding the expense of placing an empty by the southern line and subtracting, perhaps, a day from the additional time of the car service. When the cars were plentiful northern lines would not probable object if their cars went south, but would in case of car shortage. The same conditions which would permit the sending of the same car through to a southern destination would ordinarily lead to the loading of that car for the South at the warehouse of the complainant.

While the question is perplexing and while we may not have apprehended all the material points involved, we are strongly of the opinion and find that, taking everything into account, the average additional expense to southern lines in case of reconsigned hay will not exceed that of direct through shipments by more than from
59 $2.00 to $2.50 per car, which is equivalent upon the average loading of hay to about one cent per hundred pounds.

Much of the hay which actually passes through East St. Louis might reach its southern destination via other gateways. Hay grown in different sections also competes via these other gateways in the South with that which does or might pass through East St. Louis. These gateways are Cincinnati, Louisville, Evansville, Cairo, Memphis, Nashville, and perhaps others. The testimony showed that at all these points hay could be stopped off, unloaded and treated as the complainant handles its at East St. Louis without the imposition of any charge in addition to the through rate. The witnesses said that this could be done as a matter of course at the Ohio River, since the through rate was equivalent to the local rates in and out. No such reason was said to exist at Nashville or Memphis. The testimony showed that these markets all competed with East St. Louis, but the force of that competition did not appear.

The complainant claimed to recover as reparation whatever amounts it had paid the various defendants for this reconsignment privilege between May 1, 1904, and February 1, 1905, and counsel for the defendants made no objection to the complainant's recovering for that entire period if entitled to recover at all. A detailed statement was introduced by the complainant, showing its shipment over the lines of each defendant for the above named period and the amounts in the aggregate at 2 cents per hundred pounds. The arrangement was that the defendants were to check over these ship-

ments, and if found incorrect might be made. No notice having been received from them, we assume that the amounts given by the complainant are correct. These are against the several defendants as follows:

Southern Railway	$3,144.17
Mobile & Ohio Railroad	1,385.76
Louisville & Nashville Railroad	746.74
Illinois Central Railroad	179.90

We find that the complainant has actually paid to these several defendants the above sum at the rate of 2 cents per hundred pounds on reconsigned shipments.

The complainant further presented a claim for $107.64 against Illinois Central Railroad Company and accompanied that with a bundle of expense bills and a mass of correspondence which had passed between it and that company. The local rate from East St. Louis on hay to the Ohio River is 5 cents per hundred pounds. The shipments involved in this last claim were billed by the Illi-
60 nois Central Company at the local rate, while the complainant insists that they ought to have been at the reconsigned rate. In case of all the other shipments it was conceded that they were entitled to the reconsigned rate, the only question being as to the propriety or reasonableness of that rate. The question raised as to these shipments is whether they are entitled to any proportional rate at all or whether they should pay the local rate. There is no testimony in this record from which that question can be determined. We have not, therefore, attempted to find any fact with respect to that claim of the complainant.

No reconsignment charge is made at East St. Louis in case of grain and the complainant insisted that this worked an undue discrimination against hay. We find, however, that grain rates at East St. Louis are forced by competitive conditions at other points and that the failure to impose a reconsignment charge upon that commodity in no way prejudices the complainant in the handling of hay.

Conclusions.

It is well understood that a through rate may properly be less than the sum of the locals to or from a divisional point. The mere fact, therefore, that these defendants make in connection with northern lines a joint rate on hay from points of production to points of consumption through East St. Louis which is less than the rate into that point added to the rate out does not establish the illegality of any of the rates involved.

The stopping of a commodity in transit for the purpose of treatment or reconsignment is in the nature of a special privilege which the carrier may concede, but which the shipper can not, in the present state of the law, demand as a matter of lawful right. Diamond Mills *v.* Boston & M. R. R. Co., 9 I. C. C. Rep. 311. Carriers may not, however, discriminate between markets nor between individuals in the granting of such privileges. If this right is given to the

markets which compete with East St. Louis in this business by these defendants it should, *prima facie*, also be granted to that market. If these defendants allow this privilege to the competitors of the complainant at East St. Louis they should accord it the same privilege.

The case shows, although not very clearly, that the de-
61 fendants concede this privilege at other competing markets, and that a track buyer in East St. Louis itself can send along a carload, which he purchases but does not unload, without the payment of this charge. It further shows, however, that the right to unload this hay and handle it at its warehouse is of value to the complainant, and that it costs these defendants something to accord that privilege.

Under these circumstances, we think it is not an undue preference against this complainant if the railroads charge for the privilege what it actually costs them, but we do not think that they should charge more than the actual cost. The case finds that the fair average cost when the complainant handles its hay through its warehouse over and above the cost of a through shipment is from $2.00 to $2.50 per car, or approximately one cent per hundred pounds. We think, therefore, that this reconsignment charge ought not to exceed the proportional rate of more than one cent, and that the complainant is entitled to recover whatever it has paid in addition to that sum.

In deciding this case we have given to these schedules the practical interpretation which the defendants themselves have put upon them. It is very doubtful whether a strict construction of these various proportional tariffs would permit the southern lines to receive hay at the two-cent rate in any case where it was not billed through to final destination from the point of origin. But it would be so manifest a discrimination against this market to deny the right of reconsignment when that right could be accorded without additional expense, and when it is in fact accorded at every corresponding market, that we can hardly assume this to be the intention of the defendants. When an additional expense is incurred by switching the hay into and out of a warehouse there arises a legitimate reason for imposing a charge for that privilege.

The testimony tends to show, as already stated, that at other markets this additional service is performed without compensation, but that particular feature of the case is not set forth in the complaint and was only brought out upon the final hearing. It is conceivable that upon a full development of that phrase of the matter we might reach the conclusion that the imposition of any reconsigning charge was an undue discrimination against East St. Louis, but our present impression is from what appeared as to conditions at these other markets that the defendants may properly charge for the actual additional expense.

The defendants should be ordered to cease and desist from
62 imposing the present reconsigning charge of 4 cents per hundred pounds, and the respective defendants should be directed to repay to the complainant one-half of the sums stated in the findings of fact to have been paid by the complainant to the various defendants.

Petitioner also offers in evidence, as Exhibit "C," the order of the Commission in the case of St. Louis Hay & Grain Company *vs.* Mobile & Ohio Railroad Company; Illinois Central Railroad Company; Louisville & Nashville Railroad Company; and Southern Railway Company, made on the 15th day of May, A. D. 1905.

The said paper, marked Exhibit "C," is made a part of the record in this case, and is in words and figures as follows, to-wit:

EXHIBIT "C."

Exhibit C—Order of the Commission.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C. on the 15th day of May, A. D. 1905.

Present: Hon. Martin A. Knapp, Chairman,
Hon. Judson C. Clements,
Hon. Charles A. Prouty,
Hon. Joseph W. Fifer,
Hon. Francis M. Cockrell,
Commissioners.

ST. LOUIS HAY & GRAIN COMPANY
vs.
MOBILE & OHIO RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, LOUISVILLE & NASHVILLE RAILROAD COMPANY, and SOUTHERN RAILWAY COMPANY.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report and opinion herein containing its findings of facts and conclusions thereon, which said report and opinion is hereby referred to and made a part of this order;

63 It Is Ordered; That the defendants, the Mobile & Ohio Railroad Company, the Illinois Central Railroad Company, the Louisville & Nashville Railroad Company, and the Southern Railway Company be, and they severally are hereby, notified and required to cease and desist, on or before the first day of July, 1905, from charging and enforcing on hay in carloads, reconsigned from East St. Louis, in the State of Illinois, over their lines to points south of the Ohio River and east of the Mississippi River, the rate of four cents per hundred pounds, which said rate is found and declared in and by said report and opinion to be unjust and unreasonable, in violation of the provisions of the Act to regulate commerce.

It Is Further Ordered: That the complainant is entitled to recover, and the said defendants respectively are hereby directed to pay to complainant as reparation for excessive charges on hay, in carloads, reconsigned from East St. Louis, Illinois, over their lines, to points south of the Ohio and east of the Mississippi Rivers, between the first

day of May, 1904, and the first day of February, 1905, the following sums, to-wit:

Mobile & Ohio Railroad Company	$692.88
Illinois Central Railroad Company	89.95
Louisville & Nashville Railroad Company	372.37
Southern Railway Company	1572.08

And It Is Further Ordered: That a notice embodying this order be forthwith sent to each of the defendant corporations, together with a copy of the report and opinion of the Commission herein in conformity with the provisions of Section 15 of the Act to regulate commerce.

Here the petitioner rested its case.

And now, be it remembered, that the defendant, Southern Railway Company, to sustain the issues on its part, introduced the following evidence, that is to say:

64 *Testimony of T. C. Powell.*

T. C. POWELL, called for the defendant, being first duly sworn, testified as follows:

Direct Examination by Mr. NORTHRUP:

Q. State your name, residence and position?

A. T. C. Powell; residence, St. Louis, Missouri; Fifth Vice President of the Southern Railway.

Q. How long have you been in the railway service *of* the United States and in what capacities?

A. Since 1884 in the capacity of rateclerk, assistant general freight agent, general freight agent, assistant freight traffic manager, freight traffic manager, and fifth vice president.

Q. Have you had experience in reference to the making and promulgation of freight rates in the territory involved in this case, to-wit: from East St. Louis to southeastern territory?

A. I have since about 1889.

Q. Please give a brief description of the situation at East St. Louis with reference to the location of the two warehouses of the St. Louis Hay & Grain Company?

A. The map of East St. Louis on the wall will show in different colors the various railroads and railroad property in East St. Louis. At a point immediately south of the Eads Bridge, between Front Street and the river, is one warehouse used by the St. Louis Hay & Grain Company. The other warehouse used by the St. Louis Hay & Grain Company is on the corner of 10th Street and the Southern Railway tracks; between the Southern Railway tracks and Walnut avenue, and is reached only by the Southern Railway. Hay consigned to the warehouse of the St. Louis Hay & Grain Company, or intended for the warehouse of the Southern Railway tracks, is switched by the Southern Railway to that warehouse before unloading.

Q. What is the total mileage of the switch tracks and terminal tracks belonging to the several railways and belt lines in East St. Louis?

A. I don't know the total mileage of the various railroads, but the Southern Railway has about twenty miles of main line track, in addition to a great many miles of side tracks and yard tracks.

Q. Can you give an estimate of that total mileage?

65 A. I have heard it stated there is 75 miles, but that would only be ascertained by measurement of each particular line. The Southern Railway, as I have stated, has a little over 20 miles.

Q. Describe the location of the switch tracks and yard, etc. of the Southern Railway Company in East St. Louis, in a general way.

A. The Southern Railway Company has a track in East St. Louis which leads from a point above the Merchants Bridge on what we term the "North Incline", around and through East St. Louis to a point below East St. Louis which we term the Dike Yards. The property of the Southern Railway Company is indicated on that map in red. We have at different points what is termed Yards; one near Brooklyn, called the Brooklyn Yard; one in Denverside, called the Denverside Yard; one at Sixth Street, called the Sixth Street Yard, and one down in here, known as the Pittsburg Dike property, known as the Dike Yard. The Denverside yard is a yard used in making up trains to the south. The Dike yard is a yard used to dump empty cars, when not otherwise occupied. The Brooklyn Yard is a yard used for handling freight in cars of other lines, such as the Wabash and Big Four. The 6th Street yard is used for delivering freight, to some extent, and also for rehandling empty cars that we place at the various industries on the Southern Railway. All these yards are necessary, respectively, in the handling of Southern Railway freight in East St. Louis.

Q. How many railways enter East St. Louis, and give their names?

A. There are 18 principal railways, and the official Railway Guide shows their names to be as follows: Baltimore & Ohio South-Western; Chicago & Alton; Chicago & Eastern Illinois; Chicago, Peoria & St. Louis; Cleveland, Cincinnati, Chicago & St. Louis; Illinois Central; Litchfield & Madison; Louisville & Nashville; Mobile & Ohio; St. Louis, Iron Mountain & Southern; St. Louis & Southwestern; St. Louis, Troy & Eastern; Southern Railway; Terminal Railroad Association; Toledo, St. Louis & Western; Vandalia, and Wabash.

Q. How many railways enter St. Louis, and give their names.

A. I have no memorandum of the railroads entering St. Louis. St. Louis is not involved, so far as we are concerned, in this case, because, except as to our ownership of transfers across the Bridge we have no line in St. Louis.

Q. Describe generally the hay traffic coming into and

66 going out of East St. Louis to southeastern territory, and explain in general terms how the rates on such traffic are constructed and made.

A. East St. Louis is one of the primary markets for hay, and in

billing the cities of St. Louis and East St. Louis are usually classed together. The Marchants Exchange of St. Louis compiles annually figures showing the rates on hay in tons at the principal primary points—primary markets is a better term—and the statement was published in the annual report for 1904 and 1905, showing that St. Louis leads all other markets, with the exception of 1902; that is to say, commencing with 1903 and running through 1903, 1904 and 1905, respectively, hay in tons at St. Louis and East St. Louis exceeded the receipts at any other one point. Some of the other points are Cincinnati, Indianapolis, Chicago, Kansas City, Peoria, etc. It therefore follows, from the fact that St. Louis and East St. Louis together form one of the principal markets if not the principal market, that it becomes necessary for the railroad serving St. Louis, both inbound and outbound, to so adjust rates, as far as they can do so, as to place the merchants of St. Louis and East St. Louis on a competitive basis with other hay shipping points. The statistics compiled by the United States government will show the production of hay in the different states of the Union and will show also that that production varies from one section of the country to the other. We do not aim to adjust rates so as to benefit any one shipper; our purpose being to provide practical channels through which the hay crop may move to consumers in the southeast. To some extent these rates are the result of experience. In other cases some rates are the result of direct competition as between one section and another. In other cases the rates are simply competition of different kinds of carriers. I should also say that in making rates on hay to southeastern territory we generally, although not invariably give hay the benefit of the rates of grain, a commodity which moves in much larger quantities, and which therefore establishes a competitive influence at different consuming points. For instance, steamships from the north Atlantic ports, New York, Philadelphia, Baltimore, and to such ports as Charleston, Savannah and Brunswick, are very important factors in regulating and adjusting rates to these south Atlantic ports, and indirectly——

Mr. WHITNELL: I think I will object to these questions. I cannot see where they are involved in this case at all.

67 The COURT: I think the objection is well taken. It may be proper later, but it is not responsive to the question.

Mr. NORTHRUP: Well, our idea is simply to give the Court an actual idea of how rates are made.

The COURT: If the Atlantic coast traffic enters into the making of these rates, I will let him answer.

Mr. NORTHRUP: There is no doubt about that.

The COURT: I will hear it subject to the objection.

A. Steamship lines operating from north Atlantic ports to Savannah, Charleston and Brunswick are factors in establishing rates on grain from Chicago and Illinois territory, and from the west generally, by reason of the fact that grain moves on the trunk lines to the Atlantic ocean and then by water to the south Atlantic ports and is distributed by rail and by water from these south Atlantic

ports to the interior. It is that competition, which is a competition between different modes of transportation that has an effect in establishing rates on grain, and therefore rates on hay, because there are some local conditions that occasionally affect the adjustment of these rates; while from Ohio River proper points to the south the rates on hay are made the same as the rates on grain. Another factor which the lines endeavoring to move hay from Illinois and the western territory generally must consider, is the extent of local competition in the south, that is to say, the competition of hay and grain in the south with other kinds of fodder, such as cotton seed hulls, rice chaff, alfalfa and other well known forms of animal nourishment.

Q. What do you consider the local rate to be on hay from East St. Louis proper to Atlanta?

A. At the time this complaint was filed the rate was 29 cents per 100 pounds.

Q. Please state to the Court what you mean by the term "proportional rate"?

A. A proportional rate has very much the characteristics of what we term a local rate, but it always indicates a prior movement up to the point at which or from which the proportional rate applies, or it contemplates a movement beyond the point to which the proportional rate is said to apply. To illustrate: The rate on pig iron from Birmingham to Louisville is fixed at a certain figure when for consumption in the city of Louisville, but as the basing rate is the proportional rate, on the basis of the distance to points beyond Louisville north of the Ohio River, the rate is fixed usually about 30 or 35 cents a ton below the rate on pig iron intended for Louisville proper consumption. That is a basing rate or proportional
68 rate which contemplates a movement beyond the point to which the rate is said to apply,—in this case Louisville. Another class of proportional rate is the kind we apply on hay received at East St. Louis for Atlanta, which contemplates a prior movement into East St. Louis. In this case there is one cent difference between the so called East St. Louis proper rate and the reconsigning rate.

Q. What is a through rate?

A. A through rate is, in the general application of the term, over more than one,—one or more connecting carrier. It is distinguished from a local rate by the fact that a through rate generally indicates transportation from one point to another point sufficiently far away to encounter different conditions; for instance, a rate from Cincinnati to a point into Kentucky fifty miles from Cincinnati is distinctly a local rate; for the commercial conditions at that point are governed by the commercial conditions at Cincinnati. It is not far enough away to be removed from the sphere of Cincinnati influence. A rate from Cincinnati to New Orleans is distinctly a through rate, being made in competition with the river, and has no relation whatever to the rate from Cincinnati to a local point fifty miles distant.

Q. What is a division of a through rate?

A. A division of a through rate is the proportion of the rate as-

signed to each one of the carriers participating in that traffic. To illustrate: A through rate from Cincinnati to New Orleans applies over the Cincinnati Southern Railway from Cincinnati to Chattanooga, 336 miles, and then it passes over the Mobile & Ohio and the Southern from Chattanooga to Meridian, 293 miles, and then over the New Orleans and Northeastern from Meridian to New Orleans, 196 miles. Each one of these lines participate in the through rate, and the portion of that through rate assigned to each one of these lines is its division of such through rate.

Q. Well, can it be said that these words "Proportional rates," "local" and "through rates" have a technical meaning in the transportation trade?

A. I should say they had. I do not know what other business these words are used in exactly the same sense as they are in the transportation business.

Q. In your opinion can any of these rates you have mentioned be fairly compared with each other, or used as a measure of the reasonableness of each other, whereby one or more of them are to be condemned or upheld, from the point of view of reasonableness?

69 Mr. WHITNELL: We object to that. The reasonableness of it is the very question we have here, and his opinion upon that subject is not proper. He can state the facts, what the different rates are.

Mr. NORTHRUP: We are introducing him as an expert.

The COURT: Yes, this is all expert evidence, so-called. I will hear it subject to your objection.

A. Well, I can only speak from practical observation of the establishment of these rates. Take the instance which I have given, of a rate from Cincinnati to a point fifty miles south; in my experience it has no relation whatever to the rate from Cincinnati to New Orleans. The rate from Cincinnati to a point fifty miles south in Kentucky is established to meet these local conditions, whereas the rate from Cincinnati to New Orleans is established to meet the conditions prevailing at New Orleans; and the division earned by the Cincinnati Southern from Cincinnati to Chattanooga, the division of the through rate from Cincinnati to New Orleans, has no bearing whatever upon the rate fifty miles south, nor is any comparison made of that division and the local rate. Neither is the division earned by the Mobile & Ohio and the Southern Railway from Birmingham to Chattanooga out of the basing rate from Birmingham to Louisville used as a comparison or standard for fixing the rate from Birmingham to Chattanooga.

Q. Now, Mr. Powell, what do you mean by "southwestern territory"?

A. "Southeastern territory" is a convenient term used to describe a certain section of the south, and the term is adopted merely for convenience, and to avoid the necessity for enumerating the boundary lines of that territory, or the entire list of points included in that so-called Southeastern territory. I can read that description, or I can file this tariff as an exhibit, whichever you prefer.

Q. I suppose you might file the tariff. Just give the Court a general idea of what you mean.

Q. "Southeastern territory" generally, is located as described, south of

Q. What states are embraced in the description of this territory?

A. Nearly all of Alabama, part of Tennessee, all of Georgia, all of Florida, excepting the extreme western part of Florida, and part of South Carolina. Atlanta is the principal point in that territory, and the largest point.

70 By Mr. WHITNELL: Isn't Mississippi embraced in that territory?

A. Not in Southeastern territory. The line of the Mobile & Ohio Railroad runs to Columbus, and Columbus is excepted. The State of Mississippi is in what is called "Mississippi Valley territory. Generally speaking, when we refer to Southeastern Territory, and rates to Southeastern territory, we admit such principal points as Atlanta, Georgia, Macon, Georgia, Augusta, Charleston, Savannah, Brunswick, and Columbus, Georgia, Chattanooga, Tennessee, and other points of that character.

Q. Will you select some representative point north of East St. Louis, and some representative point in Southeastern territory, and explain to the Court how hay can be and is shipped via East St. Louis from or between those points you select as an example?

A. Atlanta is the most convenient point to take in the Southeast, as it is the principal point, and the original testimony refers to Bowen, Illinois, a point on the Wabash, and I have before me the Southern Railway tariff applying in connection with the Wabash from Bowen to Louisville on business that is taken to Atlanta. The rate on the Wabash Railroad from Bowen, Illinois, to East St. Louis, Illinois, is 9 cents per 100 pounds; the Mobile & Ohio and the Illinois Central short line from East St. Louis to the Ohio River, accepted on through traffic from East St. Louis to Atlanta, or did accept at the time this complaint was filed, 26 cents per 100 pounds, making a total rate of 35 cents. The Southern Railway tariff, issued August 24th, 1902, showed the proportional from Bowen to Louisville on hay intended for southeastern territory to be 13 cents per 100 pounds. The Southern Railway, on that particular traffic, accepted from Louisville to Atlanta, 22 cents per 100 pounds, making the total rate 35 cents, in connection with the Wabash Railroad to East St. Louis, and the Southern Railway from East St. Louis to Louisville, and the Southern Railway and connections from Louisville to Atlanta, Georgia. In the division of that total rate the Wabash received 9 cents, and the Southern Railway, from East St. Louis to Louisville, 4 cents, and the Southern Railway and its connections from Louisville to Atlanta 22 cents.

Q. I will ask you to describe how a through shipment will go. Why does the Southern Railway make the same rate out of East St. Louis as the Illinois Central and its connection, the L. & N.?

71 A. From East St. Louis proper the Southern Railway offers the same rate as other connections, because if we attempted to make any higher rate the business would go to the line

making the lowesr rate. The same is true as to the reconsigning rate, which at the time this complaint was filed was 28 cents from East St. Louis to Atlanta; and in the matter of division with the connecting carrier the Southern Railway must offer as favorable a division to the line originating the traffic as any competitor of the Southern Railway can afford to offer. In this case the Southern Railway acquired what was known as the Air Line. At that time the Air Line, having no interest south of the Ohio River, did not handle any hay from East St. Louis to Louisville. When the Southern Railway assumed control of the road it naturally was interested in the through movement from East St. Louis to Atlanta, and assurance was given to connections that the same divisions would be satisfactory. I have here a letter from one of the officials of one of the connecting lines. This letter is signed by the general freight agent promulgating a rate, dated October 20, 1902. It is representative of the competition which the Southern Railway was compelled to meet in order to secure a part of this through business.

Mr. WHITNELL: I think we will object to that letter, the reading of the letter. I don't see what bearing it could have.

Mr. NORTHRUP: Why, it shows how we came to meet these conditions.

The COURT: It may be admitted subject to the objection.

A. (Witness reads:)

"Burlington Route.

ST. LOUIS, Mo., *October* 20, 1902.

Mr. R. A. Campbell, A. G. F. A. Southern Ry., St. Louis, Mo.

DEAR SIR: One of the Ohio River lines has agreed to protect two cents East St. Louis to Ohio River on Hay, minimum weight 20,000 pounds, originating at points west of the Mississippi River, destined to Southeastern territory.

In issuing our notice, we have included your line, assuming that you would meet the situation. Please confirm this understanding by return mail, and oblige,

Yours truly,

(Signed) D. O. IVES, *G. F. A.*

72 This is the form in which information of this character comes to connecting lines in arranging a division of the through rate.

Q. Will you point out on the map there the short line from East St. Louis to Atlanta. Point out the line from East St. Louis to Atlanta, and give the distances if you remember them, and explain to the Court which line makes the rate on the traffic?

A. I have a memorandum of those distances, taken from the official guide; simply more convenient than looking it up and giving it.

Q. I would like for you to point out on the map and give the distances as we go along.

A. The short line from East St. Louis to Atlanta is by way of the Louisville & Nashville from East St. Louis to Evansville, 162 miles; Louisville & Nashville from Evansville to Nashville, 157 miles; Nashville, Chattanooga & St. Louis from Nashville to Chattanooga, 151 miles, and the Nashville, Chattanooga & St. Louis from Chattanooga to Atlanta, 138 miles; making a total of 608 miles. The Southern handles the traffic from East St. Louis to Atlanta, East St. Louis to New Albany, and Louisville 273 miles; Louisville to Danville, Kentucky, 94 miles; Cincinnati Southern from Danville, Kentucky to Chattanooga, 222 miles, and then uses either the Western & Atlanta Railroad from Chattanooga to Atlanta, 138 miles, or the line of the Southern Railway Chattanooga to Atlanta, 152 miles. I say we use either one, because we give shippers the opportunity of routing either way.

Q. What is your total miles right through?

A. The total distance from East St. Louis to Atlanta by the Southern, using the Southern through railway to Atlanta, is 741 miles. That is the route we use in preference when shippers do not designate any connecting line from Chattanooga. There is also a route to Atlanta in connection with the Southern Railway, Illinois Central from East St. Louis through Cairo and Grand Junction, Tennessee, and thence by the Southern Railway from Grand Junction through Chattanooga to Atlanta; or by the Mobile & Ohio Railroad from East St. Louis through Cairo, to Corinth, Mississippi, and then by the Southern Railway from Corinth, Mississippi, through Chattanooga to Atlanta; when the Southern Railway is used, exactly the same mileage.

Q. Your figures show that the short line mileage from East
73 St. Louis to Atlanta is 608 miles, while the haul you make is 741 miles. Which line makes the rate?

A. It is almost invariably the case that the short line makes the rate. In this case the short line does make the rate.

Q. Would it be possible for the Southern Railway to participate in that traffic unless it did so at the same total rate from East St. Louis to Atlanta as that made by the short line?

A. It certainly would not be possible, if they had any other route, for the Southern to secure any part of the business, unless the Southern accepted as low a rate as any one of its competitors. I cannot conceive of any conditions more favorable for movement by the Southern, which would induce any reconsignor at East St. Louis, or a shipper using either the 28 cent rate or the 29 cent rate by other lines—which would induce him to pay more to the Southern. Therefore, I think—I know—it can be very well said that unless we meet the rates of the short line we cannot secure any of the through business.

Q. Will you explain to the Court how hay moves from the representative points which you have selected, Bowen, Illinois, to Atlanta, Georgia, the other representative point, via East St. Louis, when that hay is reconsigned, as you say it is. You have already described how hay moves on a through rate, and given the rate. Take up the

situation as it presents itself from the standpoint of a reconsigned shipment?

A. On reconsignment of hay moving from East St. Louis to Atlanta, the Southern Railway's connection with that shipment does not commence until the shipper is ready to forward the car from East St. Louis. When the original carload of hay moves into the 10th Street warehouse, located on the Southern tracks, the destination may be Atlanta, and it may be for home consumption, or it may be some other destination than Atlanta; but up to the time that the shipper requests the Southern Railway Company to furnish a car for the movement of the local shipment to Atlanta, the Southern does not come into connection with it as a south bound shipment. The regulations require that in order to get the benefit of the reconsigning rate, which was at the time 28 cents, the shipper must produce a paid expense bill, showing that the hay has originated at some point in the interior and has moved by rail into East St. Louis. In that respect the reconsigning rate is different from a division of the through rate. In a division of a through rate the point
74 of origin and the point of destination must be definietly stated, because while on hay traffic we accept 26 to Atlanta, on direct traffic of all character the diversion is heavier. On reconsigned shipments, however, all we require is that the shipper shall produce an expense bill showing that the hay has originated at some point in the interior. It is not material to the Southern whether it originates at Bowen or Peoria or Springfield or any other point in Illinois. We require a movement into East St. Louis as a distinct movement, and the car on reaching East St. Louis and put into the warehouse simply becomes part of the common mass of property in East St. Louis. We do not even require that the shipper shall reload into the car destined to the south the same hay that came in by rail. He may, if he makes up a car of 20,000 pounds, accumulate that 20,000 pounds from as many cars as he sees fit,—the assumption being, it has been so represented to us, and I believe it is so stated in the original testimony—that the purpose of handling through the warehouse is to enable the shipper to grade the car and ship hay of a standard grade through from East St. Louis to Atlanta; and so far as the Railroad is concerned, we do not place any restrictions upon that. That is the distinction between a reconsignment and a division which we accept on through consignments and a proportional rate which we accept on reconsigned shipments. A through shipment is distinctly impersonal.

Q. In fixing the rate by the Southern Railway Company upon this reconsigned hay is it necessary for the Southern to make that rate the same as the reconsigned rate made by the short line? In other words, does the same reason that forces the Southern to make the same rate for through shipments apply with reference to reconsigned shipments?

A. It is the same force; that is, the force of competition, but the initials are slightly different. In the case of a connecting line, the originate a volume of traffic, and they find out in the course of business they cannot take the time to ascertain from the Southern

whether we will take a certain division on a certain car, necessarily correspondence passes between the traffic officers of the two lines, so that the initial line many know when the season for moving hay commences, whether or not the Southern Railway Company will accept the same revenue as the competitors of the Southern. In the case of reconsigned shipments, we must put ourselves on a basis of competing with other lines authorizing reconsignments in
75 East St. Louis. The fact that a shipper located on the Southern in East St. Louis has the option of selecting another carrier is another factor which makes it necessary for the Southern to accept the same as any other line. In this case, for instance, the shipper having a warehouse located on the Wiggins Ferry, and one located on the Southern, he naturally expects the Southern to put his warehouse on an equality with his warehouse on the Wiggins Ferry. Therefore we do not place any restrictions on the routing of traffic, but permit the shipper to designate the Illinois Central, the M. & O. or other lines as carrier south of East St. Louis. We have with these lines a reciprocal switching arrangement, out of which both lines is to get an equal revenue in the course of the year.

Q. Explain to the Court the situation with reference to shipments initial at East St. Louis proper, going to Atlanta?

A. That is really an almost unknown condition, because East St. Louis being such a large hay consuming point, the shipper is always able to secure an expense bill representing an inbound movement to correspond with the movement of the car. He objects, however, to the application of the 29 cent rate from East St. Louis proper to Atlanta, as that shipper not having an expense bill representing a movement of the hay into East St. Louis, whether he brings the hay to East St. Louis by wagon, or brings the hay into East St. Louis by the river, although that mode of transportation is not used very much now. It is only under these conditions that the 29 — rate would be used. The 29 cent rate primarily applies at the present time to establish a rate from local territory, on the Southern Railway and other lines to East St. Louis.

Q. Is that rate made by the Southern as a result, or by reason of the fact that the short line makes the same rate from East St. Louis to Atlanta?

A. Exactly the same conditions apply on the 29 cent rate, as far as the Southern is concerned, as with any one of the other roads. We are simply compelled to meet the competiton.

Q. I think you have given the rates that were in existence at the time of the filing of this complaint.

A. I stated what rates were in existence at that time.

Q. State what rates were in existence at that time, and how long they continued, and what the rates are at the *the* present time, as you have it on record, using the representative points that you have selected, as examples.

76 A. I think I have explained that rates are fixed from the Ohio River to Atlanta, and the Interstate Commerce Commission has prepared a statement of rates from the Ohio River to Atlanta from 1870 to the present time.

Q. I do not want you to give in detail the rates just now, but just want to get into the record the rates existing from Bowen to Atlanta through East St. Louis at the time this complaint was filed, May 27th, 1904, from June 1st, 1903, and the present rate.

A. Well, the rates in effect at the time the complaint was filed were as follows: From Cairo and Evansville, 24 cents; from East St. Louis 29 cents; reconsigning rate from East St. Louis, 28 cents; through rate from Bowen, Illinois to Atlanta, 35 cents; from Memphis, Tennessee, 20 cents. The rates in effect today, or which took effect February 1st, 1905, are, to Atlanta, Georgia: From Cairo and Evansville, 22 cents; from East St. Louis proper 27 cents; reconsignment from East St. Louis, 26 cents. Through rate from Bowen, Illinois, to Atlanta, 33 cents; from Memphis, Tennessee, 18 cents.

Q. Do you mean the rate from Cairo and Evansville to Atlanta? Don't you mean the rate from Louisville?

A. The rate from Louisville to Atlanta is the same as from Cairo and Evansville. That statement is true as to Atlanta, which we have taken as the representative point, but is not invariably true in other southeastern territory. Chattanooga and Birmingham and Montgomery have exactly the same rates today as they had at the time the complaint was filed.

Q. Mr. Kramer states that it has not been made quite clear to him how these rates are made from the Ohio River. Will you be kind enough to give an explanation of that situation so we will understand it, before we go any further.

A. Not to repeat what I have already said about——

Q. Repeat it if necessary to make it clear.

Q. What I have already said about the competition from the North Atlantic ports it becomes necessary for the lines from Cincinnati, Louisville, Evansville, Cairo and Memphis, as well as those at East St. Louis to establish rates from these southern points which will enable shippers to secure their supply of hay in the producing territory or sections of the country, and ship it via these points to some point of competition which is to say, Atlanta, Macon, Augusta, or other point in that territory. The competition that we must meet in this case is heavier simply because it is more active
77 than others; and the rates that were in effect at the time of this complaint, and the rates which are in effect today are the rates which we believe are necessory to meet that general competition. In other words, we place ourselves in the position of agents of the shippers in marketing the products of this country via certain routes. That is the way the 24 cent rate was fixed from Cairo, Evansville, Louisville and Cincinnati, and the present 22 cent rate was fixed from these same points, to Atlanta; and the rate from Memphis 14 cents; the reconsignment rate from East St. Louis being 4 cents higher.

Q. I presume the rate from Cincinnati on hay to Atlanta would represent the history of all these rates from Ohio river crossings. I wish you would state to the court what the history of those rates were, under competition, and what the effect has been upon them?

A. Probably Louisville, for a longer period than 10 or 20 years

would be a better point than Cincinnati, because prior to the construction of the Cincinnati Southern the traffic from Cincinnati was traffic from Louisville. A statement issued by the Interstate Commerce Commission in 1903, February 27th, shows the rates commencing July 15, 1870, and up to April 1st 1902, from Louisville to Atlanta, and this table shows the rates on grain, which are also the rates on hay, on the start were 57 cents in 1870, and were 24 cents in 1902.

Q. That is a period of how many years?

A. 32 years.

Q. Does that table prepared by the government show the rate on hay at the present time from Louisville to Atlanta?

A. It shows the rate to April 1st, 1902. The rate at that time was 24 cents. The rate which took effect on Febraury 1st, 1905, was 22 cents.

Q. What has been the total reduction in that rate in the period of 32 years of the government history of it?

Mr. WHITNELL: What rate do you refer to,—the Cincinnati or Louisville to Atlanta rate?

A. In 1870 the rate from Louisville to Atlanta was 57 cents; in 1902 it was 24 cents; a reduction of 33 cents per 100 pounds; or more than fifty per cent. Since April 1st, 1905, the rate has been 2 cents lower.

Q. What do you think caused that reduction during that period?

Mr. WHITNELL: I fail to see the pertinency as to the rates from Louisville south. I fail to see where it would have any application to this proceeding.

78 The COURT: I do not see the materiality of it. 32 years back is what I am thinking of.

Mr. KRAMER: We are going to ask Mr. Powell, in conclusion, to give his opinion.

By Mr. NORTHRUP, continuing:

Q. Just give the page of that compilation you refer to?

A. I have given it once. It is page 127 of part 2, of "Forty Years' Review of changes in freight tariffs", prepared by the auditor of the Interstate Commerce Commission, and issued from the government printing office in 1903. Page 127 shows freight rates from Louisville to Atlanta, Georgia, from July 15th, 1870, to April 1st, 1902.

Q. Explain exactly, so the Court will get a clear idea, what that rate has to do with this case.

A. The rates to Atlanta, Georgia, are made by the lines south of the Ohio river; that is to say, they are made by the lines leading from Cincinnati, Louisville, Evansville, Cairo and from Memphis, to Atlanta; the lines north of the Ohio river and west of the Mississippi river don't have anything to do with the rates applying from the Ohio river crossings I have named, but in making the total rate to be applied to traffic coming from points north of the Ohio river and west of the Mississippi river these figures from Cincinnati,

Louisville, Evansville, Cairo and Memphis are used as foundation rates.

Q. Explain why the St. Louis Hay & Grain Company pays this rate in excess of the Louisville rate, from East St. Louis to Atlanta, when he reconsigns this hay, the total charge is actually paid in this case?

A. The St. Louis Hay & Grain Company, or any other shipper in East St. Louis—it don't make any difference to the railroad which shipper it is, pays the total reconsigning rate—at the time of the complaint 28 cents, at the present time 26 cents, from East St. Louis to Atlanta. That rate is made by using the rate from the Ohio river as a foundation; the rate from Louisville to Atlanta. That is the rate Mr. Dye has paid to the Southern Railway Company, of the St. Louis Hay & Grain Company has paid to the Southern, which he is now trying to have paid back, part of it paid back. The rate from Louisville to Atlanta is the foundation rate.

Q. I don't think you quite understand what I want to get at. The St. Louis Hay & Grain Company allege in this case that they have paid a certain rate via the Southern Railway from East
79 St. Louis to Atanta, and they ask that part of that rate be refunded to them. Now in paying that rate from East St. Louis to Atlanta, did the St. Louis Hay & Grain Company pay the rate of 24 cents from Louisville to Atlanta in that actual transaction, that is to say, the rate which you have spoken of, compiled by the government? I want to show the relevancy of the rate to this particular case?

A. In a movement from East St. Louis to Atlanta the shipper has nothing to do with the division between East St. Louis and the point of destination. The rate from Louisville to Atlanta is a factor in this rate adjustment, because on that rate is based these other rates. For the transportation of hay from East St. Louis to Atlanta via Louisville, the several lines involved in that transportation make a division between themselves; the original reconsigning portion from East St. Louis to Atlanta being the reconsigning proportional rate established by the short line.

Q. The basis of that is the rate from Louisville?

A. The foundation for all these rates is Louisville to Atlanta.

Q. We are only talking now about the Southern Railway rate.

A. Therefore I have given a history of that particular rate.

Q. You have given a joint tariff of the Southern Railway Company showing the rates from Bowen to Louisville?

A. Yes, sir.

Q. Will you file that with the evidence in this case, if you please?

A. Yes, sir.

Mr. NORTHRUP: Would your Honor like to look at that tariff?

The COURT: Well, it will be introduced in evidence. I will have an opportunity of looking at it later.

Mr. FARRELL: I want to ask Mr. Powell a question or two concerning this tariff. Do you understand that that tariff is now or ever was filed with the Interstate Commerce Commission; a copy of it?

A. I don't suppose it was.

Mr. FARRELL: When we object to it being filed in this case. He admits that the tariff was never filed with the Interstate Commerce Commission.

The WITNESS: The reason it was not filed was because the Southern Railway Company is not the initial line from Bowen, Illinois, and the Interstate Commission does not accept tariffs except from the initial line.

Mr. FARRELL: My point is that no rate except the legal
80 interstate rate is permissible to be admitted here. That is the point I make.

Mr. NORTHRUP: Suppose we just note your objection, and argue it later on.

The COURT: All right. Go on. I will hear it subject to the objection.

A. Part of the question was an instruction to file other tariffs belonging to the same traffic. I therefore file Baltimore & Ohio Southwestern Tariff, I. C. C. Number 4745, applying to grain, grain products and hay from stations on the Baltimore & Ohio Southwestern west of Aurora, Indiana, to points in Southeastern and Carolina territories.

Mr. FARRELL: Do you pretend that the Southern Railway Company participated in that particular traffic named in that Baltimore & Ohio Southwestern tariff?

Mr. NORTHRUP: I was just going to ask the witness.

The COURT: I will have *no* notify you to proceed one at a time. Ask your questions, and if there is any objection it can be made. It makes confusion. Pursue the usual order.

Mr. FARRELL: I desire, before these are admitted in evidence, to question the witness concerning them.

The COURT: You will have an opportunity.

A. I might say that but for the interruption I would have stated, this tariff shows the Southern Railway as a participating carrier by two different routes, the first by Louisville, from certain stations, and the second by Fairfield, Illinois, at certain stations .

The second tariff is a C. B. & Q., I. C. C. tariff 3299, G. F. O. number 6548, applying to connections with the Southern Railway to points in Iowa, Missouri, Minnesota, South Dakota, etc.

The next is a tariff of the Toledo, St. Louis & Western Railroad Company, I. C. C. Number 245, applies from Illinois stations in connection with the Southern Railway.

The next is a tariff of the Chicago & Alton Railway Company, I. C. C. Number 1208, on hay carloads in connection with the Southern Railway Company.

Next is a tariff of the Vandalia Railroad Company, I. C. C. Number 1272, on hay carloads in connection with the Southern Railway Company.

Next is a tariff of the Cleveland, Cincinnati, Chicago & St. Louis
Railway Company, I. C. C. Number 1422, applying on hay
81 carloads in connection with the Southern Railway. There are several supplements to I. C. C. 1422. These tariffs are issued from tariffs issued by these lines.

Q. What do they represent, say in a general way, as to taking some representative point to destination?

Mr. WHITNELL: If they are offered in evidence we object to stating what they show in a general way. If they are offered they show for themselves.

The COURT: Yes, if the document is introduced in evidence it will show for itself.

By Mr. NORTHRUP, continuing:

Q. (Hands witness another paper.) Do I understand this is a tariff of the Southern Railway Company showing rates from the Wabash Railroad?

A. Yes, sir.

Mr. NORTHRUP: We offer these in evidence, subject to the objection.

Mr. WHITNELL: All of these go in subject to objection.

The COURT: Yes, I admitted them awhile ago, subject to objection.

The WITNESS: I should add that the only one of these tariffs that does not show the I. C. C. number is the Wabash Railroad tariff.

The said papers, identified by the witness as being railroad tariffs, are made a part of the record in this case, and marked Defendant's Exhibits 1 to 7, inclusive, and are attached hereto.

By Mr. NORTHRUP:

Q. Please produce tariffs on hay from East St. Louis to Ohio River crossings south, June 1st, 1903, and since.

A. I file Mobile & Ohio Railroad Company tariff, I. C. C. Number 3609, applying from East St. Louis to Cairo, Illinois.

I also file Southern Railway Company tariff, I. C. C. number 147, applying between East St. Louis and Evansville and Mt. Vernon, Indiana. ,

Mr. WHITNEL: I would like to suggest that it would expedite the matter simply to collect all these you want to offer in evidence and submit them to us. It would save a great deal of time. If you will select the tariffs that you want to introduce, and offer them to us.

Mr. NORTHRUP: I will be very glad to do that.

Mr. NORTHRUP: Well, we offer these two tariffs in evidence.

The said papers, last identified by the witness, as being Mobile & Ohio Railroad tariff I. C. C. number 3609, and Southern Rail-
82 way Company tariff, I. C. C. number 147, are made a part of the record in this case, and marked Defendant's Exhibits 8 and 9, and are attached hereto.

By Mr. NORTHRUP, continuing:

Q. Will you produce and file a tariff showing rates on this traffic from Ohio River crossings?

A. That is a very bulky tariff. I have not a copy with me. Can I refer to our number? This Southern Railway tariff is Southeastern Tariff 23; I. C. C. number 9614, and supplements to date. This

tariff does not contain the rates in effect at the time of the petition, but it contains on page 105 the present rate from the Ohio River to Atlanta, Georgia, on hay in carloads 22 cents per 100 pounds, which at the time of the complaint was 2 cents higher.

Mr. NORTHRUP: We offer that page.

The said paper, being page 105, of tariff identified by the witness as Southern Railway Company's Southeastern Tariff 23, is made a part of the record in this case, and marked Defendant's Exhibit 10, and is attached hereto.

By Mr. NORTHRUP, continuing:

Q. What was the rate from said crossings at the time of filing this complaint?

A. 24 cents per 100 pounds; 2 cents higher than shown in this tariff. That statement applies as to Atlanta, Georgia. It does not apply to every point in the tariff; Atlanta being a representative point.

Q. Do they cover all the tariffs concerning the rate in question on hay?

A. This is representative of the rates from the Ohio river.

Q. I mean all the tariffs you have filed, do they include representative points; representative rates?

A. I should also file a tariff for the reconsigning arrangement. The tariff I refer to is I. C. C. number 268.

Mr. NORTHRUP: We offer that in evidence.

Mr. WHITNEL: Let it go subject to objection.

The WITNESS: It shows the reconsigning rules. This tariff shows the reconsigning rules.

The said paper, identified by the witness as tariff I. C. C. number 268, is made a part of the record in this case, and is marked Defendant's Exhibit 11, and is attached hereto.

By Mr. NORTHRUP, continuing:

Q. Mr. Powell, in your opinion was the rate of 29 cents from East St. Louis to Atlanta, in effect June 1st, 1903, according to these tariffs, a reasonable rate, and give the grounds, if any, for any opinion you may express.

83 Mr. WHITNEL: We object to that—whether it is a reasonable rate or not.

The COURT: I will hear it. Of course the opinions of a witness are never conclusive.

A. I consider the rate of 29 cents on hay carloads from East St. Louis to Atlanta a reasonable rate at the time it was in effect? It was at that time the result of competitive conditions. The rate used of 5 cents from East St. Louis to Cairo in making the total rate, is less than the local tariff, which in itself is affected by competition, and the rate of 24 cents from Cairo, another part of the total rate, is also the result of competitive conditions. I consider that in that

case the sums of these two proportionals make a reasonable rate from East St. Louis to Atlanta.

Q. Have the railroads leading out of East St. Louis to Atlanta actively to compete with each other for this traffic?

Objected to by petitioner on the ground that it calls for a conclusion of the witness.

The COURT: He may answer subject to the objection.

A. I know the Southern Railway Company has to compete for the traffic. Necessarily meets competition from other lines engaged in the same business. We encourage the location of shippers on the line of the Southern Railway in East St. Louis, for the purpose of fostering the traffic.

Q. What other competitive factors enter into that rate, or did enter into it at that time?

A. The same competitive factors enter into the rate from East St. Louis to Atlanta as from the Ohio River; that is, the competition of commodities, of local markets in the south, and local production in the south, and different means of transportation from other sections of the country. Exactly the same conditions prevail at that shipping point as at others.

Q. Give an idea of the competitive factors the Southern Railway has to deal with in making these rates?

A. As I have previously stated, the most distinct competition occurs on grain; grain is subject to the competition of various carriers by different routes, by water up and down the Mississippi river, to Corinth and Vicksburg, and from the north Atlantic ports to the south Atlantic ports. In the adjustment of rates on hay we give hay the benefit of the same competition, the same as on grain.

Q. What is your opinion of the reasonableness of the existing rate of 27 cents from East St. Louis to Atlanta, taking that as a representative point?

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Mr. WHITNEL: We object to stating the reasonableness.

The COURT: He may answer subject to the objection.

A. I think the present rate from East St. Louis to Atlanta on hay is reasonably low; in fact, I think it is unreasonably low in some cases. I think that taking into account that some of the cars could — employed in more lucrative traffic, hay rates are very favorable to anybody shipping hay to Atlanta from this section of the country.

Q. What do you mean by being employed in more lucrative traffic?

A. I mean that a car which is suited for the transportation of hay, and which pays on a reconsigned shipment from East St. Louis to Atlanta 26 cents per 100 pounds, or from $52 to $55 or $56 a car, can be put into other service, such as handling corn, which while it pays the same rate per 100 pounds, loads very much heavier to the car. The same bulk capacity will accommodate from 60,000 to 70,000 pounds of corn, paying therefore two and a half or three times as much per car from East St. *St.* Louis to Atlanta. I therefore say that when we fix the rates on hay so that condition is true, we have accorded them a reasonably low rate.

Q. That is to say, you get out of a carload of hay about $56, and out of a load of corn on the same car you get $150; over $150?

A. We get in the one case 22,000 pounds in a car at 26 cent rate; in the other case we get 70,000 pounds in the car at the same rate.

Q. Now, Mr. Powell, there is a rate, a 4 cent proportional rate on a car per 100 pounds, from East St. Louis to Ohio river crossings, that cuts quite a figure in this case. Will you kindly give a brief history of this 4 cents proportional rate on hay per 100 pounds from East St. Louis to Ohio river crossings?

A. The records show that the rate has been in effect since about 1984. 4 cents is simply the differential added to the rate from Cairo and Evansville to make the reconsigning rate from East St. Louis under reconsigning rules to all points in Southeastern territory. For instance, the rate of Atlanta at the present time from East St. Louis, the reconsigning rate is 4 cents higher than 22 cents, or a total of 26 cents; to Chattanooga it is 4 cents higher than 19 cents, or a total of 23 cents; to Birmingham 4 cents higher
85 than 20, or a total of 24 cents; to Macon 4 cents higher than 24, or a total of 28 cents. In all cases it is simply a differential used to make the reconsigning rate at East St. Louis, for the purpose of putting East St. Louis on a parity, as near as we can, with other points shipping hay to Atlanta and other points in the southeast. It is not, properly speaking, a 4 cent rate at all; is not, properly speaking, a rate at all. It is only a differential.

At this point the Court took a recess until 1:30 P. M.

1:30 P. M., MAY 16, 1906.

Court met pursuant to adjournment.

T. C. POWELL again on the stand.

Direct examination resumed by Mr. NORTHRUP:

Q. State what you mean by the term "differential"?

A. It is rather difficult to explain what a differential is in brief terms. The case can be illustrated by taking another rate to show what a differential is. For instance, the rate from Cincinnati to Atlanta on grain is 22 cents; the rate from Cincinnati to Macon, 90 miles further, or 89 miles further, is 2 cents higher. That is a differential of 2 cents. There is a distinction between a difference and a differential. One rate may be 15 and another rate 40 cents, a difference of 25 cents, but in this case the rate to Atlanta may go up or may go down,—the Macon rate remains 2 cents higher. A differential might be called a fixed difference, which is applied to the foundation rate itself. In this case 4 cents is the differential which is applied to the rate from Cairo and Evansville to Atlanta, and the rate from Cairo and Evansville and Louisville all being the same, that 4 cents is added to make the reconsigning rate, even though the Atlanta rate may go up or down. The East St. Louis reconsigning rate is made a differential of 4 cents above the rate from the Ohio river. The same way with Memphis; it gets a differential of 4 cents below Cairo. It don't make any difference whether the rate to At-

lanta is 30 cents or 20 cents, Memphis remains 4 cents lower than Cairo. I can think of no shorter way of saying it than that a differential is a fixed difference applied to the foundation rate.

Q. Will you proceed with your history of how this part,
86 the differential, came to be made. Continue that, and tell the Court just how it came into existence?

A. The differential of 4 cents was due to a desire to establish a reconsigning rate from East St. Louis for the purpost of putting East St. Louis in a position to handle hay into the southeast. When we did that it was necessary to take care of that difference of 3 cents, necessary to make it only one cent higher than Cairo to enable East St. Louis to ship down into that territory. But as the figures show, the hay marketed in East St. Louis and St. Louis is relatively larger from year to year than it was four or five years ago, showing from our point of view—by that, I mean the lines to the south, the rate must be properly fixed, or otherwise East St. Louis would not develop. The business would be cut off from that territory, because it would be more profitable for the shipper here to forward his hay some other place.

Q. Was this differential made less than the local rate, and state whether or not that was a concession to East St. Louis?

Mr. WHITNEL: I think that is objectionable. I object to the form of the question. It is asking for a conclusion.

The COURT: Of course he is endeavoring to state how this rate was arrived at. He may answer that question.

A. A reconsigning rate must be less than the local rate, or the rate from East St. Louis proper, otherwise it would have no excuse for existence, because unless the shipper was benefitted by observing certain regulations he would not go to the bother of complying with those regulations. For instance, the rate being 29 cents at the time this complaint was filed, from East St. Louis to Atlanta, if he did not expect to get a better rate than that by presenting a paid expense bill and going through that process, he would not go to that trouble at all. He would simply pay the 29 cent rate and say nothing about the expense bill. By representing a paid expense bill he is getting a 28 cent rate; in other words, he is getting the benefit of one cent per 100 pounds.

Q. You said something about the inability of the shipper at East St. Louis to compete with other markets. Will you please explain what you had in mind in reference to that?

A. Other markets from which hay is shipped are Peoria, Danville, Cincinnati, Louisville and Memphis; all these points draw hay in
87 from the surrounding country, and they all ship into the southeast. Now the railroads should have known that because of that competition 29 cents was too high to permit East St. Louis to develop as a reconsigning market. It was another result of the purchase of lines serving East St. Louis, to develop that trade. The hay business gets the benefit of the competition on grain to establish the rate south of the River; then he gets the benefit of the reconsigning proportion from East St. Louis to Atlanta in

shipping hay from East St. Louis to Atlanta in competition with Cincinnati, Louisville, Evansville, Memphis and other points. Also, there is always another factor to be considered, and that is, the competition in the south with other sorts of food for animals.

Q. Is that all you desire to say about the 4 cent rate?

A. It has been in effect about 10 years—12 years, according to the records I have.

Q. Have you made any calculation comparing the rate per ton per mile on the hay in question in this case with the rate per ton per mile charged and collected in territory for instance such as that between Chicago and New York where owing to the volume of traffic and density of population and large revenues per mile of line the circumstances and conditions are not similar to those surrounding the traffic and rates involved in this case but are much more favorable and warrant much lower rates. If so, state the results of such comparison.

Objected to by counsel for petitioner. Objection overruled by the Court.

A. I have not such a statement, but I can have it prepared, based on the mileage. It is a matter of calculation.

Q. Have you any other statement showing comparison of rates with the rate now in question?

A. No, I have not.

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opinion of the Interstate Commerce Commission, which opinion has been put in evidence in this case, Commissioner Prouty said: "The defendants all have in effect what they term proportional rates on hay which is received at East St. Louis by them from their connections. These proportional rates to southeastern points are two cents above the rate from the Ohio River when the shipment is made directly through East St. Louis, but if the hay is "reconsigned" at East St. Louis the charge is 4 cents above the Ohio River rate. It is the imposition of this additional two cents for the privilege of reconsigning to which the complainant takes exception."

Please say whether the above statement is correct, and if
88 incorrect, point out to the court the errors contained in such statement.

Mr. WHITNELL: I think we will object to this manner of proving that. It seems to me the facts should be proven, and the court will determine whether or not the finding is correct. Just simply asking the witness for his opinion as to whether this decision is correct or not occurs to me as wholly improper. It is not the subject of expert evidence at all.

The COURT: I cannot submit to the witness the question whether or not the finding is correct. The form of the evidence may be objectionable, and probably is, still, I will hear what he has to say about it, subject to the objection.

By Mr. NORTHROP, continuing:

Q. Proceed, Mr. Powell.

A. This reads: "The defendants all have in effect what they term proportional rates on hay which is received at East St. Louis by them from their connections." If it is meant that they publish a sheet and distribute that to shippers on connecting lines, and that that sheet shows the rate from East St. Louis to be 2 cents higher than the rates from Cairo and Evansville, the statement is incorrect. We simply put ourselves—the Southern Railway Company puts itself in position to accept on through business the same revenue that other lines, the short line, have already announced they will accept; and in doing that we have to ask other lines to publish instructions to the traffic originating on their lines. These tariffs were put in evidence this morning, showing that a majority of the lines have done so.

The second part of the statement of Mr. Prouty, to the effect that we publish proportional rates 4 cents above the Ohio River rate is correct to the extent which the tariffs we have filed shows. It is made to construct a rate by adding 4 cents to the rate from Cairo. That 4 cents is the differential which I have explained before.

Q. On pages 91 and 92, Commissioner Prouty says:

"The tariffs of some, if not all, the defendants contemplate the application of this proportional rate only to *whichments* which are in fact through billed from the point of origin to destination." Can you point out any errors in that statement, if there are any?

A. There is the same error in that that there was in the paragraph on page 91, mentioned above. For example, we do not—as far as the Soutner Railway Company is concerned, we do not pub-
89 lish any such tariff rate making 2 cents to Cairo for these southeastern points. We accept all traffic billed to us as through traffic. The rate, or division, may be 2 cents higher. That is simply a division of the total rate.

Q. On page 92 Commissioner Prouty says:

"If this rule were strictly applied, hay shipped locally to East St. Louis and afterwards sent on, even though not unloaded, should pay a rate of 4 cents above that from the Ohio River. This, however, is not the practical interpretation which the carriers themselves have put upon these tariffs. In point of fact, if a carload of hay is consigned to East St. Louis locally upon the local rate, and the consignee of that carload determines upon its arrival in East St. Louis to send it directly forward, he may do so by paying to the line which brings it into St. Louis what is called a reconsigning charge of $2 per car. This line upon receiving directions from the consignee will deliver the car to the proper southern line, which receives it and carries it on as a through shipment. The southern lines actually know that carloads of hay received by them at the so-called through proportional rate have been shipped into St. Louis upon the local rate. In other words, they do not inquire, and make no distinction between hay which has been billed from the point of origin to some point south of the Ohio River and hay which has been billed locally into St. Louis and reconsigned at St. Louis without being removed from the car. If, however, the hay is unloaded by the owner at St. Louis, a rate 4 cents above the Ohio River rate is always imposed."

Please explain any errors, if there be such errors of fact in that statement?

A. So far as the Southern Railway Company is concerned——

Mr. WHITNEL: We object to it, for the reasons stated in the other objection.

The COURT: I will hear him tell what he knows about it.

A. In the Reconsigning circular, which has been filed as original exhibit No. 11, I. C. C. No. 268, there are instructions to agents, and also to the shipper how to handle reconsigned shipments. A reconsigned shipment coming into a warehouse to unload, and reconsign, pays the rate made, the differential of 4 cents above the Ohio River rate, which would make the rate 28 cents from East St. Louis to Atlanta. At the same time, the purchaser of the hay in East St. Louis who desires to forward the car direct from—we will
90 say from a point on the Big Four Railroad, direct to Atlanta, could have that car way-billed through from this point on the Big Four to Atlanta by way of East St. Louis, and that car could be stopped in the yard at East St. Louis, provided the destination was not changed and the shipper would be allowed to inspect the car and forward it on the through rate. The statement that the lines north have an arrangement whereby they permit cars to be billed locally into East St. Louis and then upon payment of a reconsigning charge of $2 undertake to bill that car through as a through shipment, is an arrangement of which the Southern Railway Company has no knowledge. Our undertaking on traffic in connection with the lines in East St. Louis as well as other junctions of the Southern Railway is on the theory that the billing is a correct statement of the fact; and if they bill a shipment to us as a through shipment, we have no means of knowing, unless we care to inspect and trace back every car, we have no means of knowing that it was not actually a through shipment from the point of origin to Atlanta.

Q. Will you let me have the documents that go with a through shipment? (Witness hands papers to counsel)

A. These are the documents illustrating a through movement, the actual movement on through shipments.

Mr. WHITNEL: We object to these, because the way bill and documents here refer to a shipment to territory not embraced in this territory.

Mr. NORTHRUP: They are offered merely as an illustration of how this movement is generally managed.

The COURT: It is purely an illustration. For that purpose I will allow it.

The said papers, identified by the witness, purporting to illustrate the movement on through shipments, are made a part of the record in this case and are marked Defendant's Exhibits 12, 13 and 14, respectively, and are attached hereto.

By Mr. NORTHRUP, continuing:

Q. Explain these papers to the Court, and state whether or not in every instance on a through shipment papers similar to these are

issued, and state whether or not any of these papers put the Southern Railway Company on notice that $2 has been paid to the Wabash on either five miles out of East St. Louis, or 20 miles out, or 100 miles out; or any other connecting line?

91 Mr. WHITNEL: The papers will speak for themselves.
The COURT: Yes, they would, but I will hear it.

A. This bill is a way bill from the Big Four Railroad, and indicates a shipment starting from a placed called Ohlman, Illinois destined to North Carolina, containing 27,500 pounds of hay. This document, of weight, is evidence that the car was delivered to the Southern, and signed by the agent of the Southern Railway Company; and the pencilled copy of the way bill is a *a* copy of the original bill, showing the rebilling by the Southern Railway to Gastonia, North Carolina, and showing also the point of origin as being Ohlman, Illinois, weight 27,500 pounds, loaded in same car L. S. M. S. car 42889. These are the complete documents on a through transaction.

Q. Which is the first paper that comes to the Southern Railway Company?

A. The first paper is the way bill of the Big Four.

Q. That paper you have in your hand there?

A. Waybill No. 3032.

Q. Is there anything in that paper to indicate whether that shipment has been reconsigned and $2 paid on it? Anything of that sort?

A. Nothing at all.

Mr. WHITNEL: I think the paper will speak for itself.

By Mr. NORTHRUP:

Q. Suppose the Southern Railway Company were to undertake to examine into a matter of this kind, assuming it had the right to do so, take every car coming through East St. Louis and represented to the Southern Railway Company to be a through shipment, by some connecting line, what would be the result upon the traffic at East St. Louis.

A. There would simply have to be an addition to our contract with all the other lines, were we to undertake to examine to know whether a shipment billed as a through shipment was actually a through shipment.

Q. Therefore, what is the rule of the Southern Railway Company with reference to accepting the representations made by the connecting northern lines?

A. We accept the billing of the northern line at its face value; just exactly what it is represented to us to be, a consignment through from the point of origin to the point of destination.

92 Q. Now, Mr. Powell, if it be a fact, whether the Southern knows it to be a fact or not, that the shipper can go to the yards of the Wabash and pay $2 and have a bill similar to that sent to the Southern Railway Company, purporting to make the transaction a through shipment, is that not open to Mr. Dye or any

other shipper in East St. Louis to avail himself of? Can't anybody go up there and get the benefit of that?

A. I presume so. It is not the Southern Railway regulation. I don't know whether Mr. Dye has such an arrangement with the Wabash Railroad, or anything about it.

Q. Will you be kind enough to explain fully what kind of arrangements are made between the Southern Railway Company and northern connections as to these through shipments, handling them, etc. What the understanding is in reference to rates, divisions, etc. Just in general terms.

A. As a general thing each railroad tries to secure as much traffic as it can. Therefore it is in constant communication by correspondence with connecting lines, to see that to use a railroad expression, it has full representation in the tariff of the initial line. The law requires that when a rate is made to apply over the Southern Railway it will so state, and also requires us to certify to the Interstate Commerce Commission that we participate in certain tariffs. This is for the purpose of insuring a strict maintenance of these proportions and divisions of the rate. We endeavor to get all initial lines to publish tariffs over the Southern Railway, and we make with them joint arrangements for the interchange of traffic in both directions. So there shall be the least possible delay on any through business. If, however, one taken off a connecting line was billed to us they wait until the car reaches East St. Louis, or any other junction, before they find out whether we would accept it, but they would not expect to be inconvenienced very long. The result would be to divert traffic.

Q. How would the shippers or consignees like the idea of examining each car as it came in?

A. I can only judge by what they say about cars that are delayed, when we don't delay them. Their remarks are not complimentary.

Q. Have you any figures showing the movement to the St. Louis Hay and Grain Company's warehouse at East St. Louis of cars,
93 and do those figures disclose whether the majority of the cars handled by the St. Louis Hay & Grain Company were reconsigned, or whether they went through as a through movement, there being a payment of $2 charged for handling on a regular through movement. Please give the Court the benefit of such compilations as you have on that point.

A. The through movement of traffic from connecting lines to the Southeast; our records show that during 1905 we placed at the warehouse of the St. Louis Hay & Grain Company at 10th Street over 1200 carloads, inbound shipments of hay, and of those 1200 cars only 18 were reloaded and forwarded south over the Southern.

Mr. WHITNEL: In refer-nce to that statement, Mr. Powell, that covers a period not involved in this litigation at all. He speaks of the year 1905.

By Mr. NORTHRUP, continuing:

Q. Have you got any figures back of that?

A. No.

Q. I thought you had a statement covering a number of years.

Haven't you got a statement showing the number of cars the total number of cars of hay reconsigned and shipped over the Southern Railway? for the period in question here?

A. I have a statement showing hay moved over the Southern from and through East St. Louis to Carolina territory for the period from April 1st, 1904, to January 15, 1906; nearly two years. That shows a total movement of 979 cars handled by the Southern, of which 931 cars were reconsigned, and 84 cars moved on through billing; the proportion of through traffic being very small.

Q. While you are on this subject of reconsigned cars, will you kindly show to the Court the documents involved in the transaction where a car is reconsigned. I will submit them to counsel on the other side before we offer them.

The COURT: I suppose that is a mere illustration, like the former.

Mr. NORTHRUP: Yes, sir.

The WITNESS: I will just call your Honor's attention first to the fact that in the other, the through shipment arrangement, you will note that there are only three papers. Here are one, two, three, four, five, six—double the number of documents necessary in a reconsigned shipment; all of which invokres more trouble.

By Mr. NORTHRUP:

Q. Will you kindly explain to the Court that transaction from start to finish?

94 A. There is one of the documents that is not in this list; the expense bill; the cancelled expense bill. The paid expense bill is issued by the line bringing the car into East St. Louis. That expense bill is paid to the Chairman, who issues a reconsignment rate slip at the same time. The agent issues a statement that the Southern has reconsigned from St. Louis Hay & Grain Company a car of hay. The shipper also prepares a bill of lading, which is marked by S. Frink, and the agent of the Southern Railway Company prepares another document, which is called a manifest, instructing the agent at the depot how to waybill the shipment; the agent then waybills the shipment, and the original waybill accompanies the car to destination. All that of course takes some time and considerable work.

The said papers, identified by the witness, purporting to illustrate the movement in case of a reconsigned shipment, are made a part of the record in this case, and are marked Defendant's Exhibits 15, 16, 17, 18, 19, 20 and 21, respectively, and are attached hereto.

By Mr. NORTHRUP, continuing:

Q. On page 93 of the opinion of the Interstate Commerce Commission, Commissioner Prouty says:

"It (the claimant) may occasionally forward a car without unloading; most of its hay is taken to its warehouses, there unloaded, inspected, assorted, and reloaded for the southern markets."

What do the tables, the compilations you have just mentioned, say as to the accuracy of that statement by Judge Prouty?

A. Well, I know as a matter of fact that the same hay is not gen-

erally used to move the shipment south after it has been unloaded from the car at the warehouse. I am preparing a statement covering the exact period of the complaint, showing to what extent the inbound car was used on the outbound shipment. I have a statement which shows that during the year 1905 out of over 1200 cars moved into the warehouses only 18 of those identical cars were reloaded and forwarded south over the Southern Railway.

Mr. WHITNEL: We are objecting to the statement concerning the amount of hay at these warehouses after February 1st, 1905. No issue about that.

Mr. NORTHRUP: Will your Honor give us the privilege of
95 having a statement prepared for the period covered by this litigation? From June 1st, 1903, to February 1st, 1905?

The COURT: Oh, yes.

Mr. WHITNEL: That is the period covered by this litigation.

By Mr. NORTHRUP, continuing:

Q. On page 93 Commissioner Prouty says:

"Mr. Snell, the representative of the Wiggins Ferry Company, testified that as a rule northern lines had no physical connection with southern lines, so that, ordinarily, cars must be switched by some belt line, of which there seems to be several in making the connection." That is correct, I believe. Will you state how many belt lines there are?

A. I don't understand that question, Mr. Northrup.

Q. I will withdraw that question. Further on Mr. Prouty says:

"When, now, this hay goes to the south the Southern Railway sets in an empty car at the storehouse of the complainant and takes out the loaded car."

You are not familiar with the actual movement of the cars, are you?

A. I know in a general way, but I prefer to have the man that handles the car testify. I prefer to have him testify. I only know in a general way of the exact movement.

Q. I will withdraw that question.

A. It is proper to say that the cars, the loaded cars, can be taken out immediately after the empty car is put in, as stated here.

Q. Mr. Prouty says:

"It may be fairly assumed that the service of taking out the loaded car for transportation to the south entails on the average the same expense as would be entailed in taking the through car from the northern connection and placing it in its train."

and then he goes on to say that this service is reasonably worth from 40 to 60 cents.

A. You have skipped something there, haven't you? He says the difference in service——

Q. Never mind; I won't ask you about that. On page 95 Commissioner Prouty says:

"When this complaint was filed, the complainant, in a transaction like that above detailed, paid the charges of the Wiggins Ferry Com-

pany, which was then $1.50. Since the first hearing of this
96 case that charge has been increased to $2.00, and is now absorbed, owing to certain competitive conditions, by the line carrying the traffic south, in this instance the Southern Railway Company."

State what you know about that.

A. At that time the switching charge was changed from $1.50 to $2.00: The tariffs on file show that. The switching charge was absorbed on hay principally for the reason that we had begun to absorb it on grain. The investigation as to grain was conducted by the Interstate Commerce Commission and it was decided by all the lines in East St. Louis they would absorb certain switching charges on grain, and as I have already stated, it was our general purpose to put hay on a parity with grain. We are absorbing the same switching charges on hay, on a car of hay, as we were absorbing on a car of grain.

Q. In other words, subsequently to the filing of this complaint the Railway Company absorbed the charge formerly paid by the complainant. Is that right?

A. That is right; either paid by the complainant or absorbed by the northern line.

Q. On page 98 Commissioner Prouty says:

"The demurrage charge is only $1.00 a day, and that is imposed not on the basis of a fair *quantum meruit*, but as a penalty to secure the prompt release of the car."

Please explain the reason of the rule for the demurrage charge of $1.00 a day, and state whether or not $1.00 a day represents, or is intended to represent, the earning capacity of a car?

A. The basis of the demurrage charge of $1.00 a day assessed against a car was, at the time it was imposed, rather an abrupt change from the practice that had prevailed prior to that time, when shippers had been allowed to order cars into their warehouses to be loaded, and take their own time about loading. Consignees had also been permitted to hold freight cars and use the cars as warehouses for conducting their business. That in the beginning was not a very important matter, but it was found that the railroads were short of equipment, and it was found also by careful calculation that the cars were only an apparently small proportion of the time in actual service. A great many cars were kept on side tracks and used as warehouses for months at a time. The belief was that the only way to effect a prompt return of these cars into service was to impose a charge, not with the idea of making a car while on demurrage earn
a sufficient revenue to justify the car staying on demurrage,
97 but simply as an inducement to the shipper or consignee to handle cars promptly. It was found that $1.00 a day is sometimes successful, and has effected a considerable reformation. On the other hand, it is not successful in all cases. The shipper will prefer, or rather, more particularly, the consignees, will prefer to pay $100 a day per car so they may have the use of the car as a warehouse. But there never was any purpose of making the $1.00 per day rate the earning capacity of the car. It was in a proper sense a police regulation for the prompt return of the car into service,

whether at the beginning of the journey or at the end of the journay. In my opinion it does not represent the value of the car; and if the demurrage charge had been placed at the full value. The charge must necessarily be put at less than the actual value of the cars for transportation service, otherwise it could not be maintained.

By Mr. NORTHRUP, continuing:

Q. On page 98 Commissioner Prouty says:

"The carriers themselves have agreed on 20 cents a day as the per diem charge which should be made, and we think that is enough when, as in this case, the car is not actually moving but standing still practically all the time."

Please explain what you know of the origin of the per diem charge of 20 cents per day which the railways use among themselves with reference to the interchange of cars.

A. The per diem charge of 20 cents per day was fixed by several railroads as a substitute in lieu of the previous arrangement whereby each car stood the exact mileage it performed. It was found that at certain seasons of the year the railroads which had very few side tracks, track facilities, would use cars and permit consignees to use them at warehouses. Particularly was that true as to New England territory. A large number of the cotton mills of New England purchased cotton in bales by the thousand bales, and they had not provided themselves with adequate warehouse facilities. It was also true of a great many mills that were connected with the railroad by side tracks, on the Southern lines and lines west of the Mississippi river, cars would be held for three or four months, sometimes six months. In other words, a regulation which simply charged the car with the mileage it performed was not a sufficiently severe regulation to produce any result as long as the car stood still. If made, of course, no mileage, and therefore there was nothing charged against that car on the side track. After several meetings,
98 about three years ago the per diem regulation was made effective, with the proviso that after thirty days the car should pay 20 plus a penalty of 80 cents; in other words a charge of one dollar per day. The per diem arangement should properly have been made greater, but it was thought that the change from the mileage arrangement to the per diem arrangement was rather abrupt, and a great many of the roads that had not provided themselves with equipment would be very much discommoded if they were compelled to pay more than 20 cents a day in the beginning of it, and it was thought by starting at 20 cents, and a penalty of 80 cents, or a total charge of $1.00 after 30 days, these lines that had been particularly delinquent in returning cars, would be reached. I mean particularly the New England lines. That was effective to some extent. They have, however, and it will take effect on July 1st, of this year, they have imposed a charge of 25 cents per day, with the same charge of one dollar after 30 days. The Southern Railway interchanges cars with other lines, on a basis that frequently gives more of their cars on the Southern than we have on their lines, but next month it may be the reverse. Taking some of these lines in this territory, I have

compiled some figures showing just the status of the interchange of equipment for a certain period. For instance, December 1st, 1905——

Mr. WHITNEL: We are objecting to anything of that kind, in 1905, after February 1st. Let us see that paper, Mr. Powell.

The COURT: I will have to take some notice of that. Confine the case to the time involved.

By Mr. WHITNEL:

Q. Does this purport to be cars of the Southern?

A. Yes. You will notice two columns there. You will notice I state at the left what is the date. One column Southern Railway cars with the Wabash, and the other column cars of the Wabash with the Southern. One date we had 156 of their cars and they had 156 of our cars. I submit these figures to illustrate that this is merely a method of getting a balance. It is not payment for the use of the cars. On that particular day, if that was the conclusion of it, we did not owe the Wabash anything, and they did not owe us anything.

By Mr. WHITNEL:

Q. Can you swear of your own knowledge that is correct?

A. I know that is compiled under my instructions from the
99 official records. We did not want to bring the records, because they are so bulky.

Mr. WHITNEL: It may go subject to our objection.

The COURT: Yes.

The said paper, identified by the witness, is made a part of the record in this case, and marked Defendant's Exhibit 22, and is attached hereto.

By Mr. NORTHRUP, continuing:

Q. Suppose the Southern Railway should feel like going out of business, and rent all its cars to somebody else at 20 cents per day, what would be the result?

Mr. WHITNEL: We object to that.

A. You mean what would be the return from the rental?

Q. I mean, can you illustrate whether they would make enough to pay taxes, or what would happen?

A. I have here a report of the Southern Railway Company, which shows that from June 30th, 1904, to June 30th, 1905, our equipment amounted to 41,162 cars, which at 20 cents a day, would be — per year.

Objected to by counsel for petitioner, as not material.

The COURT: I cannot see the materiality of it. There is no objection to your showing what a car would be worth.

Mr. WHITNEL: There is no objection to your showing the value of a car, or the value of the service.

Mr. NORTHRUP: Never mind, Mr. Powell: I withdraw the ques-

tion. What would be a fair estimate of the extra expense or loss incurred by the Southern Railway when a car is detained in the yards, or while waiting to be loaded, as contrasted with the through movement of a loaded car producing a revenue every moment it proceeds upon its journey? Have you got any method of showing that? If so, just state.

A. In taking a car from a connecting line and starting it on a through train over the Southern Railway to the south, as soon as it starts over the Southern its earning power starts also. We also know what length of time it is kept, after placing the car at a warehouse, after it has been ordered by the shipper,—the time that elapses from the time it is ordered, or in other words, assigned to that shipper and the time it starts out on a through train. Now the difference between these two movements is a simple matter of calculation; maybe two days, maybe three or four days. It certainly averages not less than three days. That is shown by our own experience. Now that car is worth to us, during these three days, three times the average daily value. Estimating it at $2.00 a day, the car
100 is worth $6.00 to us. We are losing this while that car is out of service. If the same car could be put into other service, why the calculation would be based entirely on the revenue produced. If the car was put into hay service, which earns so much from East St. Louis to Atlanta, at the time this complaint was filed it would have earned $56 from East St. Louis to Atlanta; in the corn service it would bring about $150 from East St. Louis to Atlanta. That is one way of estimating what a freight car would earn. The average daily earning capacity would be based on the car days and the resulting revenue, the gross revenue. I know that the Southern Railway Company's calculation develops a value of $2.02 per day; $2.03 per car per day. It should be added that every time a shipper delays a car it reduces that earning power.

By Mr. NORTHRUP, continuing:

Q. With reference to through shipments, Mr. Powell, on page 98 and 99 of this report, Commissioner Prouty says:

"While it frequently happens that carloads of hay are sent through to destination in the same cars in which they reach East St. Louis, we think the rule is probably otherwise. In times of car shortage, northern lines insist that the hay shall be transferred at East St. Louis from their cars to the cars of Southern lines. While the testimony in this case does not definitely show the extent to which that is done, it fairly appears that it is done in many cases. The cost of the transfer is in the vicinity of $1.25 per car. It must also require in the placing of the cars and the making of the transfer one and probably on the average two days. Here is, therefore, a saving in case of reconsigned hay to the carriers of approximately $1.50 per car whenever the transfer must otherwise be made by them."

Please state what errors there are in that statement of Mr. Prouty, if there are any?

A. The statement made by Commissioner Prouty contradicts itself. The very fact that there is, as he says, a car shortage, would

certainly prevent the Southern from providing a lot of empty cars standing around for loads to be transferred into them, and as he states, be idle one and probably two days. The actual fact is, we do not provide cars for transfer. As I have read from these figures showing a reciprocal car balance between several of the railroads, we have a number of cars of other lines and they have a number of cars
of our lines. By an arrangement between the railroads,
101 particularly between the Southern and its connections in East
St. Louis, cars loaded with through freight go through to destination over the Southern. If they are billed from a point on the Chicago, Burlington and Quincy Railroad, or the Wabash, or the Big Four they move from the junction no more than is absolutely necessary to transport the car. I certainly have not authorized the placing of empty cars, unless the car through some fault of ours is so defective that transfer must be made. Therefore this statement is not correct.

By Mr. NORTHRUP, continuing:

Q. Mr. Powell, at page 99 of this opinion Commissioner Prouty says:

"In addition to that the testimony shows that when cars are loaded at the warehouse they can always be loaded at their maximum capacity, whereas it often happens that otherwise the load is less than it might be. This difference would often amount to 1,000 or 2,000 pounds, and this again is an advantage in favor of the reconsigned hay."

State what you know about that?

A. Shippers have stated to the railroads at various times that the minimum carload weight of 20,000 pounds is as much as they can buy, therefore the rates on hay throughout the country generally are made on the assumption that they will be charged with a minimum of 20,000 pounds, anything in excess of that to be charged for at actual weight. The privilege of reconsigning permits the shipper to bring hay into East St. Louis and take it out of the cars loaded in the country, and after assorting, load it back into the cars. Necessarily, under these conditions the difference in the rate, as between our regular Atlanta rate of 29 cents and the reconsigning rate of 28 cents is an inducement to the reconsigner to load his cars heavily; and we expect that result to follow from the reconsigning arrangement. The same thing is true as to grain. Grain comes in from the country loaded lighter than when it goes out. That is one of the things we have in mind when we permit reconsigning.

By Mr. NORTHRUP, continuing:

Q. On page 99 Commissioner Prouty says:

"It should be still further noted that cars from the north after being unloaded at the warehouse of the complainant are frequently reloaded for the south, thus avoiding the expense of placing an empty by the southern line and subtracting, perhaps, a day from the
additional time of the car service. The exact extent to which
102 this is done did not appear."

What have you got to say about that?

A. I have figures for 1905 showing about 1200 cars moving in and only 18 moving out.

Mr. WHITNEL: We object to that. We have no objection to the period covering the time of this litigation. I do not think it is fair to introduce a longer period of time.

By Mr. NORTHRUP, continuing:

Q. On page 95 of the opinion, Commissioner Prouty says:

"It would seem, therefore, that in case of the complainant's warehouse when shipment south is made via the Southern Road the additional cost to the Southern would not exceed about $2.50. This does not include the additional time which the car is in service, and which will be referred to later."

At page 97 he says:

"There is, however, one element which has not been taken into account in determining this additional expense, and that is the use of the car itself."

And on page 98 he says:

"We think it fairly appears that an additional time of two or three days is required, and that the defendants are fairly entitled to compensation for the use of the car for this period." "In our opinion an additional allowance of 60 cents may proper- be made on this account."

On page 99 he says:

"While the question is perplexing and while we may not have apprehended all the material points involved, we are strongly of the opinion and find that, taking everything into account, the average additional expense to southern lines in case of reconsigned hay will not exceed that of direct through shipments by more than from $2.00 to $2.50 per car, which is equivalent upon the average loading of hay to about one cent per hundred pounds."

Can you explain why, after having alleged there are three separate occasions for making an allowance, Commissioner Prouty fails to add this sum to the actual expense?

A. Well, I have read that opinion several times, and the only way I can explain it is that he completely overlooks it. Certainly 60 cents and $2.50 make $3.10, and that on a basis of 20,000 pounds is more than a cent and a half.

Q. Please state generally what are the advantages by reason
103 of the reconsigning rate, that are enjoyed by the shipper; that is, what are the benefits to him in various ways.

Mr. WHITNEL: You refer to the petitioner?

Mr. NORTHRUP: Yes, the petitioner. The benefits to the petitioner, as well as all other shippers; in reference to hay in East St. Louis.

A. It gives them the benefit of several markets. If they buy hay in the country and bring it into East St. Louis, they have the benefit of testing the East St. Louis market. If they do not desire to use the East St. Louis market, they have the advantage of assorting and classifying the hay so that they can send out from East St. Louis to any other destination the exact quality of hay they desire,

and marketable at destination, and the railroads do not require that the exact identity of the hay be preserved, because if they did it would interfere with this privilege of assorting and classifying the hay and making up full cars of standard quality. We assume that that advantage is sufficient to encourage the use of the reconsigning privilege on it because we find that so far as the Southern is concerned the reconsigning transactions are very much greater than the hay movement through East St. Louis to the south.

Q. How about making large cars?

A. That is one of the characteristics of the hay trade. When a shipper requests a car to ship to the south he usually requests a large car. When he ships from the country he is probably compelled to take any car he can get, and that is one reason why his minimum carload rate increases on reconsigned shipments; but we have—East St. Louis being a large point—we always have more cars available at East St. Louis to select from than probably the shipper would have to select from at some country place. That is, he can — take what car he wants in the country he has to take whatever he can get.

Q. Is there anything further you would like to say before cross examination?

A. No, I think not. I think I have said everything I care to say.

Cross-examination by Mr. FARRELL:

Q. If a carload of hay shipped into East St. Louis from a point north, consigned to the southeast, on this rate that you describe, would the northern line get the same amount out of that
104 shipment that it would if the car were billed locally to East St. Louis and nothing said on the way bill about its going any further?

A. I don't know whether it would or not; depends on the northern line entirely.

Q. Don't you know, as a matter of fact, that the northern line would get exactly the same rate per 100 pounds on a carload shipment of hay from a northern point to East St. Louis, whether that car be billed to a point south of East St. Louis or not?

A. No, I don't, because I don't always see the billing of the northern line into East St. Louis proper.

Q. I know you don't. What is your understanding about it?

A. Generally speaking, they get paid on East St. Louis through traffic the same as the local. I don't know that they invariably do.

Q. If a car were waybilled from some point north of East St. Louis, to East St. Louis, final destination, and way billed to Atlanta, Georgia, and that car were sent over the Southern Railway in the way you have described, state to the Court what would be the amount that the line taking the car from the point of origin to East St. Louis would receive per 100 pounds on the shipment into East St. Louis,—whether it would be any different than it would be if that car, instead of being consigned through, as you call it, were sent to the St. Louis Hay & Grain Company's warehouse to be unloaded and the hay graded and reloaded into another car?

A. You mean the portion north of East St. Louis?

Q. Yes.

A. When a shipment is billed through from a point north of East St. Louis, from the point of origin to Atlanta, via East St. Louis, and is forwarded by the Southern Railway, the Southern would be compelled to accept the difference between the total rate and 26 cents per 100 pounds. The Southern Railway never accepts less than 26 cents per 100 pounds from East St. Louis to Atlanta on through shipments. If that through rate—if that point was near East St. Louis, the probability is the proportion on through traffic would be the same as on a shipment to East St. Louis proper; but if it came from further east of this section, from which the total rate is based on Cincinnati or Louisville, there is a probability that the proportion of through traffic to East St. Louis would be less than our local rate.

105 Q. Don't you know, as a matter of fact, that on shipments that come to East St. Louis from points north, the line which takes the shipment into East St. Louis always gets the same rate exactly, regardless of whether the shipment is billed to a point south of East St. Louis or not.

A. No, I don't know that.

Q. Do you know that is not the fact?

A. No.

Q. You are not prepared to state either way?

A. I am not.

Q. Are you even willing to state your impression is there is any difference?

A. I would not be willing to state an impression of that indefinite character.

Q. Would you be willing to state whether or not your understanding is that there is any difference?

A. I would not be willing to take a freight tariff or freight rate and say what I thought the rate was.

Q. Are you willing to state whether or not you think the northern line gets any more or any less out of it when it is reconsigned than when it is not reconsigned?

A. Not in taking in the whole teritory I could not.

Q. In your capacity as Fifth Vice President of the Southern Railway Company, you are in charge of the western traffic south, are you not?

A. Yes, sir.

Q. And are well acquainted with the traffic arrangements?

A. Generally, yes, sir.

Q. Regarding the question of the rate from Bowen, Illinois, to Atlanta: I think you said in that case the rate from Bowen to East St. Louis, or the division, as you all it of the through rate, from Bowen to East St. Louis, would be 8 cents?

A. Yes, sir.

Q. That is, the division of the rate from here to Atlanta would be 26 cents?

A. That is right.

Q. Making the total through rate 35 cents?

A. Yes, sir.

Q. Suppose instead of making that division at East St. Louis, we carry that hay in the first instance to Louisville, what would be the division of the rate at Louisville, as between the north and south, between exactly the same point of origin and final destination?

106 A. It would be 13 cents to Louisville and 22 cents south.

Q. The total through rate would be exactly the same?

A. Exactly. I should explain that the reason for that is, in making the rate to Louisville, to meet the rate already established to East St. Louis.

Q. Could you take that still further south, exactly the same points of origin and final destination; to Nashville, and make a division, or Chattanooga?

A. No.

Q. Do you know that as a fact?

A. Well, it may be the fact over some other line. At the time this complaint was filed the Southern had no line into Nashville.

Q. I do not claim that. What I am asking you, as traffic manager, the man in charge of this traffic, is, whether you do not know that people can take a carload of hay from Bowen, Illinois through East St. Louis to Louisville, and stop it off at Nashville and then later on reload it and send it on to Atlanta and pay the same through rate of 35 cents as they would in stopping at East St. Louis or Louisville?

A. I am confident that is not so; was not at the time this complaint was filed.

Q. If they do reconsign it, as you call it, at East St. Louis, they do pay 2 cents more per 100 pounds from East St. Louis to Atlanta, including the privilege of reconsigning, than they pay if they do not reconsign it?

A. Who do you mean by "they"?

Q. The shippers.

A. If the shipment is made from Bowen to Atlanta the shipper pays, or did pay, 35 cents per 100 pounds. It is also true that a shipment coming from Bowen to East St. Louis, and delivered at the warehouse of the Southern Railway, a car of hay said to originate at Bowen and subsequently reconsigned from East St. Louis to Atlanta, would pay 28 cents from East St. Louis to Atlanta.

Q. In other words, when the shipper ships from Bowen through East St. Louis to Atlanta, and accepts, or gets the privilege of reconsigning here, takes that privilege, he has to pay two cents more than the man who does not stop it off here for reloading, and that 2 cents difference is caused by the 2 cents additional from East St. Louis to Atlanta. Is that true?

A. No that is not true.

Q. State wherein it is not true.

107 A. The shipper at East St. Louis is not known as an East St. Louis shipper when the shipment goes forward from Bowen direct to Atlanta, regardless of whether it goes through East

St. Louis or whether it goes direct from Bowen without passing through East St. Louis.

Q. I did not say anything about the East St. Louis shipper. I am talking about the rate paid on the traffic.

A. I suppose you mean the East St. Louis man.

Q. I did not mention the East St. Louis man as being the shipper. But the fact is that this 2 cents discrimination, or difference, as you probably prefer to call it?——

A. I do not call it a discrimination at all.

Q. —is caused by the rate being 2 cents more than it would be in the other case?

Mr. NORTHRUP: We object to the question. If the Court wants at this time to hear authorities as to their rights to make such comparison, we are ready to present them at any time.

The COURT: All I am called upon now to decide is whether this is cross examination. I think it is. The other question can wait.

By Mr. FARRELL, continuing:

Q. Will you answer the question? I simply want to have you say whether or not this 2 cents extra that a man has to pay when he reconsigns a car is caused by reason of the lines from East St. Louis to Atlanta charging 2 cents more in the case of a reconsignment than in the case of a through shipment?

A. When you say this "man" who do you mean?

Q. Don't make any difference; this charge I am talking about.

A. It makes a good deal of difference to the Southern, because the man that reconsigns at East St. Louis is as far as we are concerned an East St. Louis shipper only after he has provided a paid expense bill showing the car has paid the rate into East St. Louis. If you mean to get the benefit of the through rate from Bowen to Atlanta, we consider that is located at Bowen and shipping through.

Q. In other words, you refuse to answer the question?

A. I cannot answer it.

Q. Well, I think the Court will understand it. We will be able to show it by other testimony. Now, then, Mr. Powell, suppose a car is taken from Bowen, Illinois, in the first instance to Louisville, Kentucky, and reconsigned at Louisville, Kentucky, that is,
108 routed to Atlanta, exactly what the St. Louis Hay & Grain Company does in this case at East St. Louis to Atlanta; in other words, unload and reload the car and send it along, what would the combined rate from Bowen to Louisville and from Louisville to Atlanta amount to?

A. I do not know.

Q. Wouldn't it amount to exactly the through rate?

A. No, because the rate to Louisville proper is probably higher than 13 cents; I do not happen to know what it is.

Q. I am not talking about anything of that kind. I want you to answer this question squarely. Can a man take a carload of hay from Bowen, Illinois, to Louisville, Kentucky, and unload it and reload the car and then send it forward to Atlanta, Georgia, for two

rates, the sum of which will be exactly 35 cents, the through rate from Bowen to Atlanta?

A. No, I don't think he can. The Southern Railway would charge south of Louisville on that transaction, at the time of this complaint, 22 cents per 100 pounds; that would make it necessary for the rate from Bowen to Louisville to be 13 cents per 100 pounds, but not in excess of that; to make it 35 cents it would have to be exactly 13 cents. I have said that I did not think the rate to Louisville proper from Bowen, Illinois, is as low as 13 cents per 100 pounds. I do not know what it is, but I am satisfied from my knowledge of rates that it is more than that.

Q. Suppose you take a carload of hay, what you call a through shipment, from Bowen, Illinois, to Louisville, Kentucky and then afterwards send it right along without unloading it to Atlanta, Georgia, would the whole rate be more than it would be from Bowen to Atlanta?

A. If the car went directly through Louisville without stopping at East St. Louis or Louisville, and went over the Southern to Louisville, it would be 9 cents and 26 cents, or 35 cents; 9 cents to East St. Louis, 4 cents to Louisville and 22 cents to Atlanta. By divisions, we will take the Southern running from East St. Louis to Louisville; the Southern Railway running from Louisville to Burgin, Kentucky, the Cincinnati Southern from Burgin, Kentucky, to Chattanooga.

Q. Isn't it true that whether the rate be made up of a combination of the Louisville rate, and a point south of Louisville like Atlanta, that the through rate itself is exactly the same?

A. No, sir, I have said that several times; that is not so:
109 I repeat, I do not think the rate from Bowen to Louisville proper is as low as 13 cents per 100 pounds. Probably about 15 or 16 cents.

Q. Have you any control whatever over this traffic at Louisville, so you can charge a man any more when he reconsigns it, when he unloads it, than you could if he simply had the car transported in there and afterwards transported to Atlanta? Could you make any distinction; do you make any distinction? Does the man who reconsigns at Louisville have to pay anything for it?

A. Yes, sir, because I have stated, the rate to Louisville proper is higher than 13 cents, in my opinion. If it is 16 cents, as it probably is, about 16, he pays about 33 cents on a reconsigned shipment. Then on shipments moving direct from Bowen through East St. Louis to Louisville and Atlanta, we have certain rules for reconsigning the car at Louisville, which are filed with the Commission, and which provided from certain Illinois territory a reconsigning rate of 22 cents at the time of this complaint; certain Indiana territory a rate of 24 cents, and from certain other territory a rate of 23 cents; and from certain Illinois territory there would be a rate of 23 cents. These are all covered by tariffs filed with the Interstate Commerce Commission. A reconsigned shipment at Louisville invariably pays, so far as we are concerned, the regular local rate into Louisville, whatever that may be.

Q. In other words, you secure a system of shrinkage of the rate

out of Louisville that will apply to the traffic, depending upon where it comes from?

A. Yes, sir.

Q. You shrink that 22 cent rate south of Louisville to Atlanta 2 cents if the traffic comes in the first instance from an Illinois point?

A. Certain territory in Illinois.

Q. It takes in practically everything in Illinois?

A. It does not take in Chicago. It takes in the southern and central parts of Illinois.

The reconsigning rates at the Ohio River are intended to afford a basis for dividing the traffic between several gate ways reaching the south, Atlanta, Evansville, Louisville, Cairo and Memphis. We classify the territory west of the Mississippi River with southern and central Illinois, and northern Illinois; we subdivide the Territory from Indiana. All this is to afford a basis for dividing
110 the total tonnage going to the south; exactly the same idea under which we established the reconsigning rate at East St. Louis. The reason for that is very plain. There are several lines competing for these gate ways; the Cincinnati Southern competing at Cincinnati, and the Louisville & Nashville competing from Louisville and Evansville and the Southern Railway from Louisville and the M. & O. from Memphis. Each one of these gate ways tries to secure an adjustment of the rate which brings the business through these gate ways.

Q. Suppose I should ship a carload of hay over the Southern from East St. Louis to Louisville, and at the same time I ship it for that distance, to a point in the southeast, say Atlanta, what would be the rate that would apply on it between here and Louisville?

A. Would you present an expense bill? Would you take the benefit of the reconsigning privilege here?

Q. I am not reconsigning it now, but I am presenting an expense bill, as they all do, showing a given rate.

A. Are you reconsigning it at East St. Louis? You must if you present an expense bill, because that is a characteristic of the reconsigning charge. You do not have to get an expense bill to get a rate from East St. Louis to Louisville.

Q. I am furnishing an expense bill that would get me a rate a cent lower.

A. The proper term should be applied to that transaction; that is reconsigning. You must go through the process. You must get a reconsigning slip.

Q. Then what rate would apply?

A. Where is the point of origin shown on the expense bil-?

Q. I can give you anything. I can give you west of the Mississippi River.

A. We would charge a total reconsigning rate of 28 cents from East St. Louis to Atlanta, which would be divided, 7 cents to Louisville and 21 cents south.

Q. By this you mean 21 cent rate south of Louisville?

A. Yes, sir.

Q. A man could reconsign at Louisville, have it shipped to Louis-

ville in the first instance, and unload the car there and get it through for just the same rate as if he did not unload the car there?

111 A. That is not the instance you gave. You gave a shipment from East St. Louis with a western expense bill, and asked me what that division would be out of the total reconsigning rate of 28 cents. 7 cents to Louisville and 21 cents south. Now you don't have to ship that car to Louisville proper and then reconsign the car.

Q. No, not to Louisville proper, but Louisville with final destination Atlanta, shown on the bill, final destination Atlanta?

A. Well, do you mean it would be billed out to Atlanta?

Q. Billed to Louisville, and for the purpose of sending it through.

A. Well, I really don't think there is any such transaction. I don't see what the object would be.

Q. Then are you willing to state to this Court that the man who reconsigns at Louisville is charged for that privilege the same way as the man who reconsigns at East St. Louis?

A. He is charged for the privilege, but not exactly the same way.

Q. Explain just what is done.

A. At East St. Louis we fix the reconsigning rate at 28 cents from East St. Louis to Atlanta. In order to get that rate he must produce an expense bill showing he has paid freight into East St. Louis, and on that evidence he is given the benefit of a rate one cent less than the East St. Louis proper rate. On the other hand, at Louisville, we have by publication established several different territories of origin; the rate varies according to the point of origin shown on the expense bill; I mean the rate south of the Ohio river earned by the Southern from Louisville to the destination. If that shipment originates west of the Mississippi River we do not carry the charges paid to Louisville; we simply charge from Louisville to Atlanta 21 cents; if it originates in Illinois, we will say Bowen, we charge him 22 cents; if it originates in certain territory in Indiana we charge 23 cents; if it originates in certain other territory in Indiana we charge 24 cents.

Q. What would you charge on a carload of hay from East St. Louis to Louisville if an expense bill were presented which showed it originated west of the Mississippi River?

A. We charge 21 cents on a reconsigned shipment to Louisville.

Q. I asked you what your charge would be to Louisville.

112 A. I don't know; whatever the local rate is from East St. Louis to Louisville on h[illegible] I don't happen to know that.

Q. Now, Mr. Powell, I unde[illegible]od you to say, in answer to Mr. Northrup, that in the case of a reconsigned shipment, the Southern Railway Company was in no way connected with it until it was offered for shipment to the Southern going south?

A. That is true as to the 10th Street warehouse, yes, sir.

Q. Isn't it also true of what you call a through shipment?

A. Yes, sir.

Q. So there is no distinction there?

A. No distinction. No responsibility for the safety of the shipment, if it came to that.

Q. You become connected with it just the same in both cases?

A. I think you intended to ask the question about the Wiggins Ferry warehouse, because there we do know about that shipment before it is turned over to us.

Q. Just answer the question I ask you. You spoke of this one to which the 2 cent rate is applied.

A. It is not a 2 cent rate. I don't like to have the terms mixed up. He gets a through consignment, from the same point of origin to destination.

Q. Well, you call that a through shipment, don't you?

A. Yes, sir, I call it a through shipment; exactly what it is.

Q. I just want to know whether you call it a through shipment.

A. We do not have a rate of 2 cents; we have a rate of 26 cents; we have a proportional 26 cent rate from East St. Louis to Atlanta.

Q. When a carload of hay comes in here from a point on one of the northern lines, and is presented to the Southern Railway for direct transportation to Atlanta, Georgia, do you call that a through shipment?

A. Yes, sir.

Q. When a carload of hay comes in here from a point on one of the northern lines, and is transferred to the warehouse, the Union warehouse of the St. Louis Hay & Grain Company, and is there unloaded and afterwards loaded into another car, and that car afterwards delivered to you by the transfer company for transportation to Atlanta, do you call that shipment from the point on the northern line to Atlanta a through shipment?

A. No, sir; and if you will let *he* criticise your question——

113 Q. I am just asking you——

A. You are assuming that the warehouse is not on our track; you are assuming there is a medium between us and the northern line; there is no medium.

Q. Are you willing to say that that second car, you do not call that a through shipment?

A. I do not.

Q. Then why do you apply anything except the local from East St. Louis to Atlanta to that car? What authority have you?

A. We have a tariff approved by the Commission, for one thing.

Q. What is your local from East St. Louis to Atlanta?

A. 29 cents at the time of this complaint.

Q. You do not apply that rate to that shipment, do you?

A. No.

Q. By what authority do you apply that rate to that shipment if you do not call it a through shipment?

A. Because we have established a reconsigning charge which authorizes the rate on that particular shipment of 28 cents from East St. Louis to Atlanta. Nobody will use the 29 cent rate when by presenting an expense bill they get a rate of 28 cents. Presentation of the expense bill is part of the process of reconsigning a shipment.

Q. Now, Mr. Powell, something has been said here about a statement of Commissioner Prouty concerning the 20 cents per diem. Are you able to get and furnish here, either today or tomorrow, the exact figures for the fiscal year ending June 30th, 1905, which

will show how much the Southern Railway Company paid under that per diem charge, and how much it received during that fiscal year, so that we may ascertain to what extent you either received more than you paid or paid more than you received? Can you do that?

A. I can give you such figures as we have. I am not sure whether it shows the amount paid per diem, or the total amount paid for cars, some of which of course is mileage on cars.

Q. I think it will be found in your report under these heads. (Hands witness paper.)

Mr. NORTHRUP: What is that you are handing Mr. Powell now?

Mr. FARRELL: I simply indicate to him the heading under which that comes, to enable him to more readily obtain the information I have asked for.

114 Mr. NORTHRUP: You are not offering that?

Mr. FARRELL: No, I am not offering it at all; just for the convenience of the witness.

Mr. KRAMER: We have no objection if Mr. Powell can get that up.

The COURT: That is all he is asking about.

By Mr. FARRELL, continuing:

Q. Are you able to state in a general way, whether the Southern Railway Company under that 20 cents per diem charge on cars borrows more cars than it loans, or loans more than it borrows?

A. Taking the total from year to year, or from month to month, generally, I think we have more cars on our line than Southern Railway cars on foreign lines. I have seen some reports which so indicate.

Q. Have you any general knowledge as to that fiscal year concerning the balance which you paid over the amount you received, under that 20 cents per diem arrangement?

A. No, I have not for the moment. I probably have seen the figures, but I did not charge my memory with them.

Q. You would not be able to state, then, whether or not it was three or four hundred thousand dollars you paid more than you received?

A. No, I would not for the moment.

Q. You would not be able to give any impression about that?

A. No, not except as I have stated. I think, taking the year through, we have more foreign cars on our line than Southern cars on foreign lines.

Q. You have stated that this 20 cents per day was too low, have you?

A. Yes, sir.

Q. If that be true, and you are borrowing more cars than you are lending, you are making money out of that?

A. No, we are not. I don't suppose; I have no doubt the figures we pay represent a great deal of mileage paid on refrigerators and tank cars and other cars that are not subject to the per diem allowance, and on which we do not have a reciprocal arrangement.

Q. Aren't you aware in a general way that some roads borrow very much more than they lend and other- loan very much more than they borrow, under that 20 cents per diem charge?

A. Yes, sir, I know that to be true generally.

Q. If that 20 cents a day is not sufficient, those who bor-
115 row more than they lend, make money out of it, and those who lend more than they borrow, such railroads lose money?

A. I should say so. The proof of that is that on the 21st of July it was made 25 cents, to see if we cannot make some change.

Q. You had an arrangement previous to the time that this 20 cents per diem was agreed upon, when they were paying mileage instead of that?

A. Yes, sir.

Q. Are you able to state to the Court whether or not this 20 cents per diem furnishes a better compensation to the road lending than the mileage charge did?

A. I think it allows more compensation. Some roads, as I stated in my first testimony, did not use cars sufficient to earn anything on them at all.

Q. I think you have given testimony here concerning the value of a car per day, $2.02?

A. No, I stated those are the Southern Railway figures. I did not compile those figures. I stated that is the information furnish-d me.

Q. Have you any knowledge how that amount is arrived at?

A. Well, we have one of our auditors here to testify as to that. He makes up those figures.

Q. You also stated that in one paragraph of Mr. Prouty's report which was read to you by Mr. Northrup, that one part of it contradicted the other. You stated that the Southern would not have cars in the Wabash yards laying around, did you not?

A. I said they could not afford under the circumstances to have empty cars standing around.

Q. Is there anything in this decision that says anything about Southern Railway cars being in Wabash yards?

A. If it does not say the Wabash yards it implies that very plainly. It says the northern lines do not permit their cars to go beyond their track, but require the connecting line to furnish cars to transfer.

Q. Now, then, when these transfers are made on through shipments, as you have described them, this hay transferred from one car to another, does not that transfer take place in the yard of the Southern road instead of in the yard of the northern road?

A. As far as the Southern road is concerned it does not take place. You state, as I described it. I did not describe it that way.

116 Q. You are aware that such transfers are taking place at the present time of that kind, are you not?

A. You mean from car to warehouse, or from warehouse to car, or from car to car?

Q. From car to car. Are you not aware that other roads are making such transfers at the present time?

A. That may be. We are not furnishing cars for that purpose.

Q. Ain't you aware that others road- are doing that?

A. No.

Q. I may have misunderstood you. I want to ask if I understood you to say that Commissioner Prouty, when he indicated that you are entitled to 60 cents for three days' use of a car, that when he come to sum up the difference in the expense he omitted to include that 60 cents?

A. Apparently, to me, yes, sir.

Q. I call your attention to page 98 of the report of the Interstate Commerce Commission in this case, and in the second paragraph, on that page, after discussing the 20 cents a day, which amounts to 60 cents for three days, I call your attention to this language of the Commission:

"To offset this additional burden in case of reconsigned shipments are certain advantages. While it frequently happens that carloads of hay are sent through to destination in the same cars in which they reach East St. Louis, we think the rule is probably otherwise. In times of car shortage, northern lines insist that the hay shall be transferred at East St. Louis from their cars to the cars of Southern lines. While the testimony in this case does not show definitely the extent to which that is done, it fairly appears that it is done in many cases. The cost of the transfer is in the vicinity of $1.25 per car. It must also require in the placing of the cars and the making of the transfer one and probably two days. Here is, therefore, a saving in case of reconsigned hay to the carriers of approximately $1.50 per car whenever the transfer must otherwise be made by them. In addition to that the testimony shows that when cars are loaded at the warehouse they can always be loaded to their maximum capacity, whereas it often happens that otherwise the load is less than it might be. This difference would often amount to 1,000 or 2,000 pounds, and this again is an advantage in favor of the reconsigned hay."

Isn't it evident to you that Commissioner Prouty in his
117 summing up took into account, included this 60 cents in his estimate of $2.00 to $2.50, of what the extra expense would be?

A. I don't think it is evident as far as the Southern Railway is concerned. We don't place our cars in that character of transfer.

Q. Does the Southern Railway alone make these rates?

A. No, sir, we meet the competition of the shore line.

Q. Isn't it a fact that these rates out of East St. Louis are the result of all these different elements?

A. They enter into the situation very largely. When the Southern came into this market it simply put itself in a position to compete with other lines.

Q. In other words, it accepted the rates previously made from this point by other lines?

A. Yes, sir, put itself in position to compete.

Q. Do you in every instance have a through rate from points north, on lines north of East St. Louis, on traffic that comes to the Southern?

A. I think we do; it is our purpose to have it so.

Q. If a car should come over some line that you did not have a joint through rate to East St. Louis, and it was designated to go over the Southern from here to Atlanta, would you accept that car in the absence of a joint through rate and defy,—what you call a divisional joint through rate, which is generally applied?

A. Occasionally shipments must necessarily come in that way, but it is not our purpose to have anything of that kind. We met the rate when we came in here; met the rate of competing lines. We did not find out all these things immediately. We have only been here since 1901.

Q. Speaking about the St. Louis Hay & Grain Company reloading for shipment to the south cars that came from the north, wouldn't there be just as much likelihood of that car that came in from the north being reloaded to the south, as to load the hay in another car to go through to the south?

A. No, sir. We have a general understanding with the various lines that we will respect their equipment. We will not misuse them. Now if we were to violate that understanding and misuse the equipment of the northern line, it would not be long before the St. Louis Hay & Grain Company would be saying, "we cannot get —— cars on the Southern track. It is simply a matter of good faith. We endeavor to keep our faith with our connections.

118 Q. They get the same out of it.

A. They do get the same out of it, but in moving a car directly south they are under obligations to the shipper at the point of origin, and their obligations *is* when it gets to East St. Louis, where it comes on the East St. Louis local rate. I will further add to that, that we do not want to use foreign cars as long as we have any Southern Railway equipment available. We do not want to figure a balance paid for foreign cars.

Testimony of E. K. Voorhees.

E. K. VOORHEES, called for the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. NORTHRUP:

Q. Please state your name?

A. E. K. Voorhees.

Q. What position do you hold, if any?

A. General Freight Agent of the St. Louis & San Francisco Railroad, St. Louis.

Q. How long have you been engaged in the railway service of the United States?

A. Since 1880.

Q. In what capacities?

A. Well, as clerk, commercial agent, assistant general freight agent and general freight agent.

Q. Have your duties enabled you to obtain experience in reference

to the matter of promulgating rates of the character involved in this case, from East St. Louis to Southeastern territory?

A. Yes, sir.

Q. What was the rate from East St. Louis proper to Atlanta on June 1st, 1903?

A. On hay, I presume you mean. 29 cents, carload.

Q. State whether or not you consider that a reasonable rate, and give grounds for any opinion you may express?

A. Yes, sir, I consider it a reasonable rate. There are a number of things that influence me in that conclusion, one of which is my general knowledge of the cost of transportation and the running of various railroads, and the profits which they make, also the relation of the hay rate to rates on other commodities, such as grain.

119 I know from my own experience that the railroads I have been connected with were desirous of making rates on hay which would permit the marketing of the product of the country which that railroad served and even to make the rates as low as they felt they could afford on the hay traffic. Yet rates made under such conditions have always been higher than the rates on grain, in southwestern territory; the average being 30 to 40 per cent., based on the per ton per mile average.

Q. Have you any other reason for that?

A. Well, less loading in a car of hay, is a very important factor. Hay on our line averages about 11 tons per car, and corn about 26 tons; average on all agricultural products about 19 to 20 tons per car.

Q. Is that all you desire to say on that subject?

A. I think so.

Q. I will ask you what is your opinion as to the reasonableness of the reconsigning rate of 28 cents for hay from East St. Louis to Atlanta?

A. I think it is a reasonable rate.

Q. Are these rates on hay and grain out of East St. Louis competitive rates?

A. Yes, sir.

Q. Do you know what competition has produced these rates, and if so, describe it generally?

A. The competition of the Ohio River market, Cairo, Evansville, Louisville and Cincinnati, producing territory in Illinois, Indiana and Missouri river and the southwest.

Q. Just give an instance to the Court showing how this competition from Kansas City via Memphis to Atlanta would have an effect on the rate from East St. Louis via Louisville to Atlanta?

A. I do not know that I have the rates well enough in mind to do that. The rate from Memphis to Atlanta is 18 cents.

Q. I do not care; take any place different from St. Louis.

A. The rate from Memphis during the time I understand is the period involved in this case, was 20 cents to Atlanta. The rates from producing points in the southwest, southwest Missouri and Kansas, at that time ranged from 18 to 25 cents, making a total rate from perhaps considerable of the territory to Atlanta of 40 cents per 100

pounds. St. Louis dealers, or reshippers of a through ship-
120 ment, would have to have, to move any hay through St. Louis, would have to have a rate into St. Louis that would approximate a through rate. It might be somewhat higher and still be on the same basis.

Q. Do you know whether St. Louis and East St. Louis, under the operation of the rates which have prevailed here, have developed large shipments of hay, in a general way, from this gateway?

A. I could not answer that. I have no information on that subject.

Q. Just state anything further that you desire, in reference to the reasonableness of these rates?

A. I believe I have nothing further to say.

Q. I would like to ask you if you are interested at all in this lawsuit here?

A. No, sir.

Cross-examination by Mr. FARRELL:

Q. Your road crosses the river at Memphis, does it not?

A. Yes, sir.

Q. Do you grant a reconsigning privilege at Memphis?

A. No, sir, not on hay.

Q. Do you know whether or not hay is shipped there and unloaded and reloaded into another car and sent on to the southeast?

A. To some extent. In times past there has been a considerable amount. To some extent, more or less.

Q. Did that privilege of unloading and loading again make any difference in the through rate from one point to another?

A. It didn't in some territory; in some others it did.

Testimony of Joseph M. Denyven.

JOSEPH M. DENYVEN, called for the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. NORTHRUP:

Q. Please state your name, residence and what position you hold?

A. My name is Joseph M. Denyven; residence, St. Louis; General Freight Agent of the Mobile & Ohio railroad.

Q. How long have you been in the railroad service of the United States, and in what capacities?

121 A. About 24 years; clerk; rate clerk; claim agent, assistant general freight agent, and general freight agent.

Q. Have you had experience in the making and promulgation of freight rates in the territory involved in this case, from East St. Louis to southeastern territory?

A. Yes, sir, I have had some experience.

Q. In your opinion is a rate of 29 cents per 100 pounds on hay from East St. Louis to Atlanta a reasonable rate or not a reasonable rate, and give the grounds for any opinion you may express?

A. I think it is a very reasonable rate from one standpoint, the

standpoint of commodity, and commercial competition. It is a reasonable rate from the standpoint of transportation, that is, the earnings per car, liability, etc. It looks to me as though the rate was somewhat low from that standpoint. On the whole I think it is a very reasonable rate.

Q. Are you familiar with the essential conditions that produce that rate?

A. Well, generally.

Q. Well, state generally.

A. Generally speaking, hay is produced in Indiana, Ohio and I believe some in southern Michigan, in Illinois, Kansas and Nebraska, and a low rate to the Ohio river of course is going to draw hay to the Ohio river.

Q. What is your opinion as to the reasonableness of the reconsigning rate of 28 cents from East St. Louis to Atlanta?

A. I think that is a very reasonable rate; a fair competitive rate.

Q. Do all these roads leading out of East St. Louis actively compete with each other?

A. Why, we certainly compete with the other lines; and I presume they all compete with us. There might be one exception. For instance, some of the west side lines handle the business for the Southern but don't participate in the business; possibly the Iron Mountain don't compete on the grain traffic or hay traffic to the southeast.

Q. Why?

A. I think that is on account of the rate being too thin; don't consider it profitable.

Q. Do you know anything about this 4 cent differential spoken of here this morning, mentioned in the complaint; and if so, state what you know about it?

A. Well, I don't know that I am exactly clear; I remember
122 it was put in about 1895; I do not know that I can state clearly enough to make it sufficiently clear.

Q. Is there anything further that you desire to state in reference to the issues involved here?

A. No, sir, I don't recollect anything.

Cross-examination by Mr. FARRELL:

Q. The Mobile & Ohio Railroad operates through Cairo, I believe?

A. Yes, sir.

Q. Do you permit reconsignments at Cairo?

A. On hay?

Q. Yes?

A. No, sir.

Q. Did you formerly permit such reconsignments?

A. No, sir, the hay rate—always paid the flat Cairo rate.

Q. Is hay unloaded and reloaded there?

A. Not to my knowledge.

Q. Simply goes through?

A. Yes, sir.

Q. Has the Mobile & Ohio a joint through rate from points north of East St. Louis to southeastern points?

A. A through rate to the southeast?

Q. From points north of East St. Louis?

A. My recollection is they only have proportional rates to the Ohio River.

Q. Just describe what that proportion of the rate is that you apply on through shipments from points north of East St. Louis to Atlanta?

A. Well, the through rate in effect, 11 cents is added to the rate in effect at Cairo to establish the through rate to the southeast.

Q. The rate from the point of origin to Cairo, plus the rate from Cairo to Atlanta, would be equivalent to the through rate from the point of origin to Atlanta?

A. The rate into Cairo, the proportional rate into Cairo, plus the rate from Cairo out would make the through rate.

Q. Is there anything to prevent a person from shipping, from a point north of East St. Louis a carload to Cairo, a carload of hay, and unloading it at Cairo, for the purpose of grading, or something else, and then loading the hay into another car and sending
123 the other car along at the proportional rate, so that the carriage from the point of origin to the point of destination would be the same as if it had not been unloaded?

A. I do not think we have any such arrangement of that kind.

Q. I was asking you if there was anything to prevent a man doing that?

A. I could not say just offhand what our rules are, without looking into our tariff.

Q. You do not know of any rules that would prevent——

A. I think we had some rules issued some time ago which prohibit that.

Q. You do not know that you have any such rule.

A. That is taken into a warehouse—state that question again.

Q. I say, is there anything in your tariff to prevent him from unloading at Cairo and afterwards sending it along in another car at that proportional rate out from Cairo, so that the rate he would pay from the point of origin to final destination would be the same as if the car had not been unloaded?

A. Unloaded? Unloaded into another car or into a warehouse?

Q. Well, into another car out of the warehouse?

A. I don't think we have any rules authorizing that.

Q. Do you know of any rule to prevent that?

A. Well, we would hardly permit it unless we had a rule that authorized it.

Q. Has he a right to ship to Cairo at the proportional rate?

A. He could ship to Cairo and then to the southeast.

Q. There is nothing to prevent his unloading at Cairo, is there?

A. Well, it is supposed he would ship it right through. As far as I know we have had nothing of that kind.

Q. Do you know of any reason why he could not ship on that proportional rate to Cairo and unload it and then send it on in another car out of Cairo?

A. There is no proportional rate out of Cairo, and under our rules we do *ont* ordinarily allow anything which varies from the tariff we have published. You are putting a hypothetical case, what he might do.

Q. Well, you stated he had a right to ship into Cairo on
124 that proportional rate and then out of Cairo to the southeast, didn't you?

A. Yes, sir.

Q. Now, then, the rate out of Cairo is a flat rate that is the rate that applies on any kind of traffic, which applies on the car regardless of where it comes from?

A. The rate from Cairo applies without reference to where it originated.

Q. Come back to the first question asked you. Under those circumstances could not a man ship to Cairo in the first instance, and unload the hay and load it into another car and then ship along on that flat rate from Cairo to Atlanta, in such a manner that the rate to Cairo and from Cairo to the point of destination would be exactly the same as the through rate published from the point of origin to final destination?

A. Well, a man can ship to Cairo under that proportional rate, and then reship in the same car from Cairo.

Q. Or in another car, can't he?

A. No, I would not say another car, for I don't know that to be the case.

Q. Is there anything to prevent it? Does the flat rate out of Cairo — ?

A. Yes, sir; he pays the proportional rate into Cairo; in the absence of anything to the contrary, he would go into Cairo on the proportional rate, and then reship to the southeast in the same car.

Q. Now when you stop that car for reshipment to Atlanta from Cairo, you do not inquire where that car came from, do you?

A. Well, under the proportional tariff I would say we would; that would not be a flat shipment from Cairo, when you apply the proportional rate into Cairo and the flat rate from Cairo.

Q. The rate from Cairo to Atlanta is 22 cents per 100 pounds?

A. At the present time I believe that is the figure.

Q. That applies on carloads of hay for transportation from Cairo to Atlanta, regardless of where the hay comes from, and regardless in what car that is offered?

A. That is true.

Q. What is there to prevent any man from offering any other car and getting that 22 cent rate?

125 A. There is nothing to prevent him from getting the 22 cent rate.

Redirect examination by Mr. NORTHUP:

Q. The local rate, as you have stated, from East St. Louis to Atlanta is 29 cents?

A. Well, the present local rate is 27 cents. At the time they refer to it was 29 cents, but the present rate is 27 cents.

Q. Now a man that brings a car of hay in here and reconsigns

it can ship it to Atlanta at 28 cents; from East St. Louis to Atlanta, can't he?

A. Yes, sir.

Q. He could, rather, at the time of this complaint?

A. Yes, sir.

Q. He gets the benefit of one cent below the East St. Louis rate proper?

A. Yes, sir.

Q. At Cairo—from Cairo to Atlanta the rate is 22 cents?

A. Yes, sir.

Q. Or what was it?

A. 24 cents it was.

Q. 24 cents at the time of this controversy. When the shipper gets the car, did get it, into Cairo, for the purpose of shipping it to Atlanta, what rate did he pay out of Cairo?

A. He paid the flat rate of 24 cents.

Q. He could not go to anybody, to any railroad in Cairo, and get a reconsigning rate of 23 cents, could he?

A. No, sir.

Q. Or any lower rate than the flat local rate?

A. The flat rate, yes, sir.

Q. Therefore, the East St. Louis man was better off than the Cairo man, wasn't he?

Mr. WHITNEL: I object to that manner of interrogating the witness.

Mr. NORTHRUP: I withdraw that.

Recross-examination by Mr. FARRELL:

Q. You have answered in reference to a man taking a car down there and unloading the hay into another car and sending it along. Suppose he took the car down there and did not unload it,
126 but sent it along, would not the through rate be exactly the same as though he unloaded it?

A. Well, the through rate on a car that was not unloaded would be whatever the sums of the rates might be.

Q. So he would not pay any more if he unloaded than if he did not unload it?

A. Well, he would not pay any more than the combination.

Mr. KRAMER: We have permitted interrogations to be made with reference to what is done at Louisville and Cairo and other gateways, with reference to reconsignments without extra charge; we have permitted questions to be asked along that line but we want it understood that all such interrogations are subject to our objections. It don't make any difference what they might permit at other gateways we would not be bound to do the same in East St. Louis under different conditions.

The COURT: Well, they have not come to their case.

Mr. KRAMER: No, but they have cross examined our witnesses.

The COURT: You understand that your examination was so wide in the first place that almost anything could come in. You can save your point.

Mr. KRAMER: We object to any testimony being introduced in this case with reference to reconsignment charges or that no reconsignment charges are made at Cincinnati, Louisville, Evansville, Cairo, Memphis, Nashville and other points, because in the original petition filed before the Interstate Commerce Commission no complaint was made of any undue or unreasonable prejudice or disadvantage against East St. Louis or any person, or undue or unreasonable preference or advantage in favor of the Ohio and Mississippi River gateways and other localities or in favor of any persons therein located; and because the Commission in its Report and Opinion says that no such issues were raised before the Commission, and no such issues are made by the pleadings in this case in this Court; and therefore all such testimony is irrelevant; and because it does not appear that similar conditions exist at East St. Louis as exist at these other gateways.

The COURT: I will overrule the objection and hear the evidence, because I think it is cross examination.

To which action of the Court in overruling said objections the defendant by its attorneys then and there excepted.

127 Because no issue was mase as to undue preference or unreasonable prejudice with reference to East St. Louis and with reference to Cincinnati, Louisville, Cairo, Evansville and other Ohio River crossings in the original petition filed before the Interstate Commerce Commission introduced in evidence herein and marked Exhibit "A," and because the Interstate Commerce Commission in its report and conclusions introduced in evidence herein and marked Exhibit "B" finds that no such issues were made, and because the pleadings in this Court make no such issues, and because nothing appears in the evidence to show that the conditions and circumstances at the Ohio River Crossings are similar to the conditions and circumstances at East St. Louis, and because said testimony is irrelevant.

Mr. KRAMER: It will then be understood that we are objecting to all testimony bearing upon this question.

The COURT: It will be understood that this objection applies to all testimony offered upon this subject.

Testimony of Robert L. McKellar.

ROBERT L. MCKELLAR, called for the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. NORTHRUP:

Q. Please state your name?

A. Robert L. McKellar.

Q. What position do you hold?

A. Assistant freight traffic manager of the Southern Railway Company at Louisville, Kentucky.

Q. How long have you been in the railway service of the United States, and in what capacities?

A. Twenty-one years; Clerk; soliciting agent; general western

agent; assistant general freight agent, and assistant freight traffic manager.

Q. Have you had experience in reference to the making and promulgating of freight rates in the territory involved in this case, from East St. Louis to southeastern territory?

A. I have.

Q. You stated to me a moment ago it was not quite clear to your mind, the explanation that had been given to demonstrate how the traffic moved, actually moved, into the southeast. Do you desire to say anything on that?

A. I would like to illustrate that by taking the map. The
128 grain and hay originates in the states of Ohio, Indiana, Illinois, Nebraska, Minnesota, Missouri and Arkansas, and as far down as Texas. That is the territory of production, extending from Texas clear around in a circle to Ohio. The territory of consumption is southeastern, Carolina and Mississippi valley territory; that is the particular territory of consumption in which we are interested. The gate ways for this grain and hay to move through in reaching the territory of consumption, commencing with Cincinnati, on the Ohio river, and then down, Louisville, Evansville and Cairo. The Mississippi gate ways are East St. Louis, and Memphis, and on Texas grain Evansville and New Orleans. Now with that volume of business moving, it is necessary to fix a basis of some kind on which it may distribute itself with some degree of equality through these gate ways, beginning at Cincinnati and going around in a circle to New Orleans. I will dismiss New Orleans and Evansville by saying that only Texas grain moves through these gate ways, and I will confine myself to Memphis and Cincinnati. Many years ago, long before the time in issue here today what they called the Ohio and Mississippi river basis was put in, to that southeastern territory, which has ben described. The rate from Cincinnati, Louisville, Evansville and Cairo, was made the same. From Memphis, Tennessee a differential of 4 cents less was paid. If at any time the rate was made 30 cents from the Ohio river crossings, Memphis would automatically be fixed at 26 cents, or 4 cents less. In the same way, when in 1903-1904, the rate from the Ohio river to Atlanta on grain and hay was 24 cents a hundred pounds, at that same time from Memphis it was 20 cents, or 4 cents less. When it was, on February 1st, 1905, made 22 from the Ohio river, it was made 18 cents from Memphis. I have endeavored to fix in the mind of the Court how the Ohio river rates are made. When it comes to bringing the traffic down to the river on that basis hay was reduced so as to equalize the movement. If Indiana has got a good crop of hay and grain, and too much of it is moving through, and at the same time Missouri and Kansas have a good hay and grain crop, and the grain is moving too much through Louisville and Evansville, the natural gate ways through which Indiana grain will move, Missouri and Kansas would ask us to make some adjustment in their figure so as to permit a free movement of this traffic through the gate ways their fields are

tributary to, Memphis and East St. Louis. In the same way,
129 when it comes to handling the business from East St. Louis, both grain and hay lines in the north undertook to so fix the rate and the division from East St. Louis, as to permit a free movement through that gateway. And that same principle obtains when it comes to fixing the rates on reconsigned hay from East St. Louis to the southeast. The rates on hay west of the Mississippi river tributary to Memphis are something higher than on grain, ranging from two to two and a half and 3 cents per 100 pounds higher than the rate on grain to Memphis. Evidently that was taken in consideration when the reconsigning rate of 4 cents per 100 pounds was put in from East St. Louis to the Ohio River, the grain rate being less; it being felt that hay, which is a cheaper commodity and a less remunerative commodity for hauling, would stand that higher rate; all rates being made largely on a competitive basis, the rate from East St. Louis therefore would stand a little higher than the grain rate, the same as the rate west of the Mississippi river to Memphis stands a little higher than the grain rate.

The illustration I wanted to make just to show the general trend of freight there and the principle on which that basis was fixed the same, say from Cincinnati, Louisville, Evansville and Cairo, so that there would be a fixed basis, and one that would work automatically, and that the lines north of the river would know what they would have to pay when they got their grain to the river; they could adjust their rates as they saw proper down to the river, the object being to so equalize and so adjust the rate as to permit a reasonable movement through the various gate ways that are served by these different lines that are competing for this traffic. Unless there is something else to be asked on that, that is all——

Q. You have practically answered the question. You stated that these lines were competing for the traffic; for instance, you state if they had a large crop in Indiana or Illinois, and if they had a large crop in Missouri and Kansas and Nebraska, then those lines serving the western territory, Missouri and Nebraska and Kansas, would have to adjust their rates to meet the competition of other crops coming over from Indiana. Is that correct?

A. If the rates from Indiana to the Ohio River were adjusted, say approximately 8 cents per 100 pounds, from the fields of production to the Ohio river, and over in Kansas the rate were approxi-
130 mately 14 cents per 100 pounds to Memphis, Kansas, from the freight rate standpoint, is out of line, for the reason that they are 6 cents higher to the river than Indiana, Memphis being only 4 cents less than the Ohio river. It would appear, then that the Kansas hay fields were 2 cents out of line, and they would very likely then adjust their rates by reducing them from 14 to 12 cents.

Q. In other words, they would meet the competition?

A. Yes, sir.

Q. That process has been going on——

A. For years and years; the object being to equalize the movement through these various gate ways.

Q. Have you prepared a table comparing the rate on hay from East St. Louis to southeastern territory now existing, and the rates as they existed June 1st, 1903, and up to February 1st, 1905, with the rate from other territory for similar distances, under substantially the same circumstances, in reference to the rate now in question? If so, please take that table and state to the Court what you found in reference to the character of these rates, how they compare with the rate in question here, the 29 cent rate and the 28 cents rate to Atlanta?

A. Yes, sir, I have made that comparison.

Q. Go ahead and state what you found. What is the distance, the actual haul from East St. Louis to Atlanta? What is that distance?

A. The short line distance?

Q. I mean the actual haul of the hay in this case?

A. The Southern Railway haul from East St. Louis to Atlanta over its line is 739 miles; that is, the Southern Railway to Louisville, through New Albany, and the Southern Railway down to Danville, and the Cincinnati Southern from Danville to Atlanta.

Q. What is the rate per ton per mile you figure out on that haul?

A. It is 7-9/10 mills per ton per mile.

By Mr. WHITNEL:

Q. Where is that from?

Mr. NORTHRUP: From East St. Louis to Atlanta over our line.

The WITNESS: 7-9/10 mills per ton per mile.

By Mr. NORTHRUP, continuing:

Q. What does the 28 cent rate produce per ton per mile, over our line?

A. I want to correct the figures per mile that I have given; the figures have been on the reconsigning rate of 28 cents instead of 29 cents; the figure that I gave is based on the reconsigning rate of 28 cents.

131 Q. That is, then, the rate for reconsigning is 7-9/10 mills per ton per mile?

A. Yes, sir.

Q. Now, Mr. McKellar, compare that rate with some through rate for hauling hay for about the same distance more or less, to some other part of the country.

Mr. WHITNEL: We object to this method—this comparing proposition. You must first show the conditions are the same.

A. The points I have selected have been——

Mr. NORTHRUP: One moment.

The COURT: I am afraid an inquiry of this sort will be interminable. Of course the real question is here, whether this rate is legal or not. Still, if I knew it would not extend to an unlimited period, I might let some of — in, subject to objection.

Mr. NORTHRUP: We will try and make it as short as possible.

The COURT: Well, proceed.

Mr. NORTHRUP: While we are on that point we are going to show that it is a favorable rate, even compared with the lowest rate in the world, that is, the rate between Chicago and New York.

The COURT: Well, go ahead.

By Mr. NORTHRUP:

Q. Now, Mr. McKellar, what rate are you giving us now?

A. Peoria to Atlanta.

Q. State why you think that rate is similar to the rate in this case.

A. Peoria is a hay market of some consequence; hay moves out of Peoria to Atlanta with a most regular movement.

Q. You mean it goes from Peoria—where is Peoria?

A. Peoria is north of East St. Louis.

Q. In other words——

A. North of Springfield.

Q. It moves from practically the same territory as in this case?

A. The same territory; the short line distance from Peoria to Atlanta via Evansville 693 miles; through rate 34 cents.

Q. What is the rate per ton per mile?

A. One cent per ton per mile, as against our 7-9/10 mills
132 per ton per mile. Terre Haute, Indiana, is another large hay shipping point; the shortline mileage to Atlanta via Evansville is 555 miles; through rate 30-1/2 cents; rate per ton per mile 1 cent and 1/10 mill.

Q. How many miles is that?

A. 555 miles.

Q. What is the rate?

A. 30-1/2 cents.

—. In other words, that is a less mileage—our mileage 739 miles?

A. Yes, sir.

Q. And a greater rate?

A. Yes, sir.

Q. Just mention another.

A. From Vincennes to Atlanta is 498 miles; Vincennes Indiana, by Evansville, 498 miles; through rate 30 cents; 2-1/100 cents per ton per mile. Indianapolis, Indiana, to Atlanta, shore line, via Louisville, 564 miles; through rate 33-1/2 cents; 1-19/100 cents per ton per mile. Kansas City to Atlanta, via Memphis, short line mileage 905 miles; through rate is 34-1/2 cents per 100 pounds; rate per ton per mile 76/100 of a cent; slightly less than from East St. Louis to Atlanta. Kansas City to Memphis a distance of 487 miles, has a reconsigning rate of 14-1/2 cents per 100 pounds.

Q. Produced from other points than Kansas City?

A. Yes, sir; comes into Kansas City in the same way that hay is brought into East St. Louis, being pretty much the same process of reconsigning; for that distance, 487 miles, the through rate per ton per mile is 6/10 of one cent.

Q. Against our 7-9/10 mills per ton per mile from East St. Louis to Atlanta?

A. A good comparison of Kansas City's proportional rate of 14-1/2 cents for 487 miles would be, East St. Louis to the Ohio River reconsigning rate of 4 cents for a distance of 151 miles. This latter rate pays 5-3/10 mills per ton per mile.

Q. Almost half a cent.

A. A fraction over half a cent per ton per mile for the short distance of 151 miles; Kansas City pays 6 mills for 487 miles.

Q. Now, Mr. McKellar, will you please explain to the Court why it would be unfair to compare the rate, our rate into the south-
133 east, from East St. Louis to Atlanta, with the rate on hay and grain from Chicago to New York? Explain that.

A. In the first place, the movement from Chicago to New York, is for a long distance, and is in very large lots, particularly in grain; and, then, again, it goes through, goes from and to through a densely populated section, and where roads serve such sections, such densely pipulated sections, there is, of course, more tonnage than in thinly populated sections, therefore the rates are usually lower than through sparsely settled sections, as we may term the territory from East St. Louis to Atlanta, through the territory which that line would traverse.

Q. What influence has the length of navigation of the Erie canal on that rate from Chicago to New York?

A. More influence than anything I have mentioned yet; heavy competition; lake competition.

Q. It is pressed down by that competition, and must necessarily be a low rate?

A. Yes, sir.

Q. Now Mr. McKellar, what is the rate on hay—or first, on grain from Chicago to New York?

A. Well, I have not that down here, but my recollection is 17½ cents per 100 pounds.

Q. What is the rate on hay from Chicago to New York?

A. 30 cents per 100 pounds.

Q. They charge almost double for hauling hay than they do for hauling grain?

A. They charge that much higher.

Q. What makes them do that?

A. Well, not being on the Chicago, New York line, I could not say positively, but I think I have enumerated some of the reasons, but no doubt the *ome* that governs is that hay is not as desirable traffic to handle as grain; you cannot load as much of it.

Q. Why do they take hay and grain at the same rate out of East St. Louis to the southeast.

A. It is a low commodity down south; the price of it is not too high, and the railway has always been made to see that it would not stand a higher rate, or a materially higher rate than on grain. A number of roads have for years held that hay should pay a higher rate than grain, for obvious reasons,—the first being that you
134 cannot load much more than 22,000 pounds on an average,—figure it about 22,000 pounds average, even using large cars, such as box cars,—furniture cars; these cars will hold more than

22,000, but it takes some of these big ones to bring the average even to 22,000.

Q. You make that concession on hay to help it along?

A. To move the traffic; put a rate on it that will move it. If you make the rate on any commodity too high it won't move.

Q. Well, you do not take all that it will stand? In other words, how does that operate? Does it operate in the reduction of rates in order to help traffic, or does it operate—does that mean that you calculate exactly how much it will bear—all the profit there is in, and you take that?

A. By no means at all. If hay would not move at, say a differential of six cents higher than grain, we would consider whether it would move at 5 cents or 4 cents, or 3½ cents, or one cent, and parties passing on rates have been talked into making the same on hay as on grain; that is, south of the Ohio and east of the Mississippi river; that has not obtained invariably north of the Ohio and west of the Mississippi river.

Q. You consider that a disadvantage to the road?

A. Well, I do to an extent, yes, sir.

Q. Let us get back to the Chicago—New York rate. You stated that the rate per ton per mile on hay was what?

A. Was 66/100 of one cent; six mills and 6/10.

Q. What is the rate per ton per mile on that 4 cents differential that these gentlemen give them here in East St. Louis?

A. 5 3/10 mills.

Q. Less than the other?

A. Yes, sir.

Mr. NORTHRUP: This witness has prepared a table showing mileages, short line mileages to Atlanta, which we offer in evidence.

Objected to by complainant. Admitted subject to objection.

The said paper is made a part of the record in this case, and is marked Defendant's Exhibit 22A, and is attached hereto. (Short line mileages from St. Louis, Cairo Evansville, Louisville and Cincinnati, to Atlanta.)

By Mr. NORTHRUP, continuing:

Q. You have another table showing the production of hay in the different states involved in this territory for a series of years.
135 Let me have that table, so I can show it to these gentlemen on the other side.

(Witness hands paper to counsel.)

Q. Have you got a table showing the actual amount of hay shipped from East St. Louis?

A. I have over the Southern Railway.

Defendant offers both papers in evidence.

Mr. WHITNEL: We object to these, on the ground that they do not cover the period involved in this case. They are incompetent to prove the issues involved in this case.

The COURT: They may be admitted subject to the objection.

The said papers are made a part of the record in this case, and marked Defendants' Exhibits 23 and 24 respectively, and are attached hereto. Exhibit 23 being headed "Statement showing the production of Hay, Wheat, corn and Oats and average price prevailing in the States named below for the period, 1898 to 1905, inclusive." And Exhibit 24 being headed "Statement of through billed and reconsigned hay from E. St. Louis to the Southeast, Carolinas and to Nashville for three years."

By Mr. NORTHRUP, continuing:

Q. I meant to ask you whether in your opinion the rate of 29 cents, and the reconsigning rate of 28 cents, from East St. Louis to Atlanta, is a reasonable rate, and give your grounds for any opinion you may express.

A. I think they are very reasonable.

Q. Well, why?

A. Well, because I think in themselves they are sufficiently low, and again, they are sufficiently low to protect the free movement of the business in competition with other markets. The largest factor in making rates is competition.

Q. You- theory indicates a free movement on these rates?

A. It does.

Cross-examination by Mr. FARRELL:

Q. Did you prepare the tables you have submitted here?

A. They were prepared under my direction; some of them I prepared myself.

Q. Are you willing to state whether or not they are correct?

A. They are to the best of my knowledge and belief.

136 Q. Where is your office located?

A. At Louisville.

Q. Could a man ship a carload of hay to Louisville from this section of Illinois, and then load the hay into other cars and send the second car to a point in the southeast. Was that the practice?

A. Let me understand the question? You want to know what is the movement of *at* a car at Louisville; go into a warehouse there and then reship the car from Louisville to the southeast?

Q. Yes?

A. I think it may be correctly said that there has been such a movement, although I will add that I think it is very lately.

Q. When they do unload it in that way is the through rate from the point of origin any more than it would be if they had not unloaded it?

A. Depend on where it came from. If it comes from a point that there is only one rate into Louisville, it will pay whatever the local rate may be from Louisville to final destination. If it comes from a point that there is only one rate into Louisville, say six cents or 9 cents per 100 pounds, if it gets into Louisville it would have to pay that 9 cents; and if it goes out by the Southern it will pay whatever the local rate may be from Louisville to final destination.

Q. Your answer is that in some cases it increases the rate from the point of origin to final destination, and in other cases it does not.
A. There are innumerable instances where it would increase it.
Q. You stated about the rate from Chicago to New York on hay, 30 cents?
A. Yes, sir.
Q. Are you aware that before January 1st, 1900, it was only 25 cents?
A. That is not my information.

137 *Testimony of E. D. Hayes.*

E. D. HAYES, called for the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. NORTHRUP:

Q. Please state your name?
A. E. D. Hayes.
Q. What position do you hold?
A. Assistant auditor of the Southern Railway.
Q. Where are you located?
A. Washington, D. C.
Q. Have you made a calculation from the books of the Company, the Southern Railway Company, showing the average daily earnings per car for a certain period?
A. I have.
Q. For what period?
A. The year ending June 30, 1905.
Q. What is the result?
A. $2.02.
Q. Are you prepared to say that for the period from June, 1903, to June 1st, 1904, the earnings would have been approximately the same?
A. My opinion is that there would have been very little difference either way.

Cross-examination by Mr. FARRELL:

Q. You made a statement concerning the earnings of a car, $2.02 per day; is that right?
A. Yes, sir.
Q. On what do you base that calculation?
A. By taking the total number of our cars and the car days in a year, for the year ending June 30, 1905, and dividing it into the gross freight earnings for the same period.
Q. In doing that you took Sundays as well as other days?
A. Took all days.
Q. That sum includes all your earnings divided by the number of cars you own?
A. Not the cars; that is the car days; that is the average earnings per car per day; the net average earnings per car.

Q. Make that entirely plain, so there won't be any mistake about it.

A. I can probably do it best by using one car as an illus-
138 tration for one year. If a line owned one car and that car remained on its line and was in service the entire year there would be 365 car days; if it owned 10 cars and the 10 cars remained on its line during 365 days there would be ten times that much to produce the car days.

Q. Then you divide the earnings by the car days.

A. Divide the earnings by the number of car days.

Q. That would be the earnings, any earnings that might be made by the motive power?

A. That of course includes freight earnings.

At this point Court adjourned until tomorrow, May 16th, 1906, at 9 o'clock A. M.

9 o'clock A. M., *May 16th*, 1906.

Court met pursuant to adjournment.

Testimony of Robert L. McKellar.

ROBERT L. MCKELLAR, recalled, for the defendant, being already sworn, testified as follows:

Direct examination by Mr. NORTHRUP:

Q. (Hands witness paper.) Please state what that is?

A. This is a statement showing receipts and shipments of hay in tons at St. Louis for the last four years; shows there has been a steady increase, and that St. Louis is the largest hay market in the United States; also showing a comparison with other hay markets of the United States.

The said paper is admitted subject to objection, and made a part of the record in this case, and marked Defendant's Exhibit 25, and is attached hereto.

Mr. NORTHRUP: We also introduce in evidence a statement taken from "Part 2 of Forty Years' review of Changes in Freight Tariffs, prepared by the Auditor of the Interstate Commerce Commission," showing rates on hay from St. Louis and East St. Louis to Atlanta, Georgia, for the period beginning in 1879 and ending in 1902. In 1879 the rate was 49 cents per 100 pounds and was gradually reduced to the rate of 29 cents which we have in question here.

The paper referred to is admitted subject to objection, and made a part of the record in this case, marked Defendant's Exhibit 33, and is attached hereto.

Mr. NORTHRUP: We also introduce in evidence from the same compilation, prepared by the government, entitled "Forty Years Re-
view of Changes in Freight Tariffs, Prepared by the Auditor
139 of the Interstate Commerce Commission," a table showing the rate on sack grain per 100 pounds, from St. Louis, Missouri, via the Mississippi River steamers, to Memphis, Vicksburg, Mississippi, and New Orleans, Louisiana.

A. The table begins with a showing of the rates in 1871, and brings it down to 1902. In 1887 the rate to Memphis was 25 cents, to Vicksburg 35, and to New Orleans 35 cents. The rate was gradually reduced until in 1901 the rate to Memphis was 10 cents, the rate to Vicksburg 15 cents and the rate to New Orleans 10 cents. The table begins in 1871. In that year the rate to Memphis on hay was 50 cents and to Vicksburg 65 cents. That table brings the rate, through a series of years down to 1890, when the river rate on hay to Memphis was 15 cents, to Vicksburg 20 cents and to New Orleans 20 cents.

Q. Do you know what the rate on hay is by river from East St. Louis to Cairo at present?

A. 10 cents per 100 pounds.

Objected to by counsel for petitioner.

The COURT: He may answer subject to objections.

By Mr. NORTHRUP, continuing:

Q. Will you have these tables drawn off and filed here as an exhibit?

A. Yes, sir.

Mr. WHITNEL: We object to the introduction of these tables as not pertinent evidence.

Admitted subject to objection.

The said paper above referred to, is marked Defendants' Exhibit 34 and made a part of the record in this case, and is attached here.

Testimony of J. R. Peachy.

J. R. PEACHY, called for the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. NORTHRUP:

Q. Please state your name, residence and position?

A. My name is J. R. Peachy; residence, St. Louis, Missouri: position, assistant general freight agent of the Illinois Central.

Q. How long have you been engaged in the railroad service of the United States, and in what capacities?

140 A. Since 1883; several years, three or four years, as rate clerk; four years as chief clerk, and the remainder of the time as assistant general freight agent.

Q. Have you had experience in reference to the making and promulgation of freight rates of the character involved in this case, to-wit: from East St. Louis to southeastern territory?

A. I have.

Q. What do you consider a proportional rate?

A. I consider a proportional rate a rate that is made from a junction point of a northern road, as a division of these through rates; although it may be applied to reconsigned shipments rehandled at that junction point; unloaded and rehandled and reshipped.

I would like to correct that somewhat. I have stated it was a division of a rate. That is not what I should have said. A proportional rate is merely a rate such as we have in effect on hay from East St. Louis rehandled and reloaded. In the sense of reconsignment, a proportional rate, a division of a rate would be the rate that we accept, the proportion that we accept, rather, as part of the through rate, from here to the original point of shipment.

Q. Mr. Peachy, aren't all these rates on hay from East St. Louis to southeastern territory entirely on a competitive basis?

A. Yes, sir.

Mr. WHITNEL: I object to the form of the question, as direct and leading.

By Mr. NORTHRUP, continuing:

Q. Well, I will change the form, then. Will you state to the Court what produces the rate out of East St. Louis to the southeast?

A. Competition.

Q. Just mention in detail what that competition consists of?

A. The competition is that which is created by the various producing territory from which shipments can be made and going through St. Louis. In other words, we have to make certain rates from East St. Louis to the southeast to bring the hay to East St. Louis and carry the traffic from that point to the southeast in competition with hay that could move there by other gate ways without passing through East St. Louis, such as Evansville, Louisville, Cincinnati and Memphis.

Q. Will you describe to the Court a sample rate to show why it is that East St. Louis rate has to be made with reference to the
141 rate via Memphis gateway; take some representative point west of Memphis, and explain directly how that East St. Louis rate is affected by the rate from some other territory.

A. I am not prepared to furnish any figures just now, because I do not carry them in my mind. The fact remains, that the rates on hay, as well as on grain, are predicated on shipments from the west and also from certain points in Illinois; for example, we had to make a certain rate out of East St. Louis to enable hay to come into East St. Louis to be rehandled and re-shipped, in competition with shipments from other gate ways that might be concentrated at other points. But as for facts and figures, I could do it later, but am not prepared to give them just now.

Q. Well, assuming that the figures are a certain amount from Kansas City via Memphis to Atlanta on hay; now suppose that a shipment originates at Springfield, Illinois and comes down to East St. Louis destined to Atlanta. Should your rate at Springfield to East St. Louis and the total rate on to Atlanta, be made any higher than the Kansas rate, what would be the effect on the Springfield shipments, as far as Atlanta was concerned, if your rate is a cent or two cents higher?

A. The hay would not move from that point in competition with the other hay; not unless it was hay of a better character, that had no competition from any other territory.

Q. In other words, then, the lines of road out of East St. Louis, as a general proposition, are obliged to take into consideration as a factor the rate from other territory to Atlanta on hay?

A. Yes, sir, as far as the business——

Mr. WHITNEL: We object to the question as leading.

The WITNESS: As far as the revenue will permit.

The COURT: They object to the leading and suggestive form. It is not always objectionable to suggest to a witness, especially on a subject that everybody knows, and I think everybody knows what he is telling now. I think the Court takes almost judicial notice of it.

By Mr. NORTHRUP, continuing:

Q. Now take the roads serving Kansas and Nebraska, and take the roads serving Indiana and Illinois and Ohio. Do they get together and agree on rates or act independently?

A. Each territory acts independently, in their territory. In other words, the railroads feel that they are a sort of foster father to
142 the growers of hay, and they have got to furnish them markets, and therefore they make rates that will move the hay, independently of what may happen in Indiana or Illinois; such rates as they can afford to make, to enable the producers along their rails to market their product.

Q. Each railroad adopts its own tariff?

A. Yes, sir.

Q. Mr. Peachy, in your opinion is a rate of 29 cents from East St. Louis to Atlanta, which prevailed during the period covered by this case, and the reconsigning rate of 28 cents from East St. Louis to Atlanta, reasonable and just rates? If you have any opinion at all to express, please give the grounds for your opinion?

A. I consider them reasonable, that is, by comparison with other commodities, chiefly products such as are used for animal food. The loading of grain is much in excess of that of hay, and the revenue on grain is greater than it is on hay; but because of the competition stated before, and also the fact that it is the desire of the roads, and particularly the lines that lead from East St. Louis to the southeast, or to the south, to have a diversity of crops in the various territories along their lines, if they did not make the rate on hay low we would kill the traffic, that is, the movement of hay from this territory to the southeast; because then the consumers of hay in the southeast would very likely put a considerable acreage into hay, that would take the place of cotton. Now we want cotton in the south grown, and we want hay grown in the north, thereby securing traffic in both directions. That is, when we send cars loaded with hay to the southeast, we have those cars for a loaded movement north bound, that is, with cotton, lumber and other commodities, pig iron, etc.

Q. Is there a large amount of hay passing from here to the south at the rate you have now?

A. Yes, sir. I have not any figures prepared, but I know there is a large amount.

Q. In other words, you are forced to make a low rate on account——

A. Of these various conditions, yes, sir.

Q. Is there anything further you would like to say about the reasonableness of these rates?

A. No, I think I have about covered everything that could be covered. Competition and the desire to save the traffic.

143 Cross-examination by Mr. FARRELL:

Q. It is your understanding that railway rates are very likely to be made by competition between markets and railways?

A. Yes, sir, that is my understanding.

Q. I suppose you undertake to give the different points along your line an equal, opportunity to ship to different points, do you not?

A. We do, yes, sir.

Q. How long did I understand you, you have been in the passenger business in St. Louis?

A. I have been in St. Louis since October 10, 1904.

Q. I take it that it is not always the difference between two kinds of service that determines the difference you make in rates; that is one of the elements?

A. Do you mean in fixing the rate from the shipping point to destination?

Q. I mean in fixing railroad rates in general; it is not merely—the cost of the service is not the determining factor always?

A. Not always, no, sir. The conditions; market conditions, and the desire to foster traffic, etc. sometimes move us to make a lower rate on certain articles than really we would like to.

Q. Are you aware that previous to June 1st, 1903, the railways at East St. Louis made no distinction at all from East St. Louis to the southeast on account of this reconsigning privilege?

A. I could not say positively; I am not here, and did not look after that local traffic.

Q. Well, if it is true at the present time that East St. Louis dealers pay 2 cents, while Ohio River points and other points on your line are allowed the privilege of reconsigning without extra charge, that would put the East St. Louis dealers at a disadvantage compared with the dealers at these other points, would it not?

A. Well, it might; depends entirely upon the conditions presented at East St. Louis. The man who handles hay in East — Louis at warehouses has the benefit of other large markets, East St. Louis and St. Louis; he tests those markets, and if he prefers to get a better price by shipping to the southeast he ships to the southeast; but the
144 man at Cairo has no market to test, and therefore very little hay comes into Cairo that is unloaded and reloaded. The rates break at Cairo. You cannot charge a man any more than the local rate to Cairo and the local rate out. The Cairo man has no large market, as the East St. Louis man has.

Q. He may, however, get the advantage of grading his car by reloading it?

A. He may do that, but it is so limited in volume that it cuts very little figure.

Q. It is your understanding, is it not, that when a car is reloaded, that is an advantage to the railroad, for the reason that the next load is heavier than the first one?

A. Depends on the quality of the hay that is in the car, whether it is heavier or lighter.

Q. What is the fact? You know how the business is done. Don't the cars that go out of East St. Louis, after being reloaded, average a greater weight than those that come in?

A. Yes, sir, it is a fact; it will average probably two or three thousand pounds per car, but as a rule not to exceed 22,000 to 23,000 pounds.

Q. You have defined a proportional rate. Is there a division of a through rate?

—. My definition was, such a rate as we have on hay when we reconsign it at East St. Louis, where our rate is 28 cents, against the division of the through rate, which pays us 26 cents; on the through movement we get 26 cents; that is the division of the published through rate, while on the other hand the 28 cent rate is a proportional rate applied on this hay when we handle it here and reconsign it.

Q. Your tariffs say on this hay reconsignment rate from East St. Louis to Atlanta, would be 4 cents above the rate from the Ohio River?

A. Yes, sir.

Q. Haven't you filed with the Interstate Commerce Commission another tariff wherein you say that the rate from East St. Louis shall be 2 cents in addition.

A. We have.

Q. Do you see any distinction between the divisions made in these two tariffs?

A. You mean difference in revenue to us?

Q. No, sir, is there any difference except the difference in revenue that you can see in these tariffs?

A. I do not know that I can answer that, unless the revenue is involved. There is more than that. There is the extra expense of handling the stuff where it is rehandled here.

145 Redirect examination by Mr. NORTHRUP:

Q. You have compiled, did you not, a statement showing, on your line the average loading per car, of a reconsigned car, and the average loading per car on a through movement?

A. I have not, but I can easily get it. Covering what period?

Q. Will you prepare data for the time involved in this suit, June 1st, 1903, to February 1st, 1905?

A. Yes, sir.

The said paper, referred to by the witness, purporting to be a statement showing the average loading per car of a reconsigned car, and the average loading of a car on a through movement, is made a part of the record in this case, subject to objection, and is marked Defendant's Exhibit 26, and is attached hereto.

Testimony of Seth Frink.

SETH FRINK, called for the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. NORTHRUP:

Q. State your name, residence and position?

A. Seth Frink; residence St. Louis, Missouri; position, Chairman of the Southern Trade Association.

Q. How long have you been in the railway service of the United States, and in what capacities?

A. I commenced the railway service in 1855, as car boy, and after working in the passenger and freight transportation departments in several capacities, the last active railroad service was with the Missouri Pacific and Iron Mountain railway; after quitting there I have been acting as Chairman for this Association.

Q. Have you had experience in the making and promulgation of freight rates in the territory involved in this case, to-wit: from East St. Louis to southeastern territory?

A. Years ago, yes, sir.

Q. How long have you been living in St. Louis and East St. Louis?

A. I have lived in St. Louis for seventy years.

Q. Will you explain to the Court the interesting memoranda you gave me, as to the effect of the Mississippi river on freight
146 rates from East St. Louis to the southeast, as far as your experience extends, on hay and grain?

Objected to by counsel for petitioner. Heard by the Court subject to the objection.

A. Why, in the beginning of the transportation of freight to the southeast in cars through without transfer, the rates to this territory were made, if I am not mistaken, higher than the rates made by steamboats to various points, for instance, Johnsonville, Tennessee, Hickman, Memphis and Vicksburg.

Q. Have you any knowledge of the first carload shipment from East St. Louis to the southeast?

A. I supervised that in behalf of the Iron Mountain, as its general freight agent.

Q. How did it move before that?

A. It moved before that from here by steamers, as I say, direct to Johnsonville, Hickman, Memphis and Vicksburg, and into the southeast by way of New Orleans. From this point there were railroads to the southeast. The Iron Mountain was the first road that made rail connection from St. Louis to that section of territory.

Q. You personally supervised the first through carload shipments of grain and hay from East St. Louis to the southeast?

A. I won't say there was any hay in it. I would not say what the cars were loaded with, but the first cars loaded here that went there.

Q. How about Cairo at that time? Was there any railroad——

A. Cairo had no rail connection with the southeast; a road from here to Cairo but none south from Cairo.

Q. Is it a fact, Mr. Frink, that the rail rates were actually made and controlled by the river rates?

A. Certainly they were.

Q. Explain why you did not desire the hay traffic at that time, if there is any reason?

A. I think there was very little hay *tariff* at that time from here. Hay was considered undesirable, first because it was loaded light, and second because of the danger of fire.

Q. Can you recollect the date when these first shipments were made?

A. They began during the latter part of the summer or the early fall of 1870.

147 Q. Subsequently to that were other lines built extending into the southeast from East St. Louis?

A. Connection was made with Cairo, and with Evansville, and later the direct line of the Southern Railway to Louisville.

Q. Have all these lines actively competed for the traffic?

A. Very actively, for all the traffic, as far as I know; I know they did in my time.

Q. Does that have any effect on rates?

A. Undoubtedly has an effect on rates.

Q. On hay?

A. On everything.

Q. Including hay?

A. Including hay.

Q. Will you be able to express an opinion as to whether or not the 29 cent rate on hay from East St. Louis to Atlanta, and the reconsigning rate of 28 cents on hay from East St. Louis to Atlanta, during the time it was in existence, that is to say, from June 1st, 1903, to February 1st, 1905, were reasonable rates; and if you can form any opinion about that, give the grounds for your opinion?

A. Why, my opinion as a railroad man is that I should not have desired the business at those rates. I never considered it remunerative enough. I think I could have done better with the rolling stock.

Q. Do I understand you to say that in your opinion they were unreasonably low?

A. I do consider them unreasonably low.

Cross-examination by Mr. FARRELL:

Q. How long have you been Chairman of this association?

A. Since February, 1893.

Q. Is it, or is it not, a fact that previous to June 1st, 1903, this 2 cents per 100 pounds in question here was not exacted for the privilege of reconsigning at East St. Louis?

A. I do not know anything about that.

Q. Haven't you been acquainted with rates during that time?

A. I have been acquainted with the rates to Atlanta on hay that was reconsigned, but not with regard to through business.

Mr. KRAMER: Before I interrogate the next witness I de-
148 sire to read in evidence a portion of the report of the Interstate Commerce Commission for 1902, in reference to the per diem on cars.

Mr. WHITNEL: We object to that. I cannot see where that has anything to do with this matter.

Mr. KRAMER: It has this to do. The Commission made an examination into this question, as the report shows, carefully, and made a report on it; a report on the very question of whether or not 20 cents per day is a fair charge for car rental. That report is signed by all of the Commissioners, including Mr. Prouty.

Mr. WHITNEL: I don't see how that could become evidence here.

The COURT: I will hear it subject to the objection.

Mr. Kramer reads as follows:

"The interchange per diem rate is 20 cents per car per day. This is generally regarded as too low, but it is necessary to make a low charge in order to secure an agreement among so many and so diverse interests. Even this inadequate sum is said to be higher from 30 to 50 per cent. than the average income per day formerly received by the principal companies under the mileage system. The present arrangement is based on contracts for one year to July 1, 1903, made through the secretary of the American Railway Association. Though some companies which both borrow and lend on a large scale will suffer a net loss by the adoption of the new method—unless they readjust their relations with the connecting lines, or advance the price of the consignee for certain switching and other services—it is confidently believed that the reform will be permanent.

The weakness of the new plan is in its rigidity. The same charge applies alike to cars of 15 tons capacity or of 50 tons, and it is the same per day for a 10 mile journey as for one of 2000 miles; but the same weakness concerning capacity existed under the mileage plan. It is also true that under the new plan, as under the old, a borrower may unfairly retain a foreign car for local service by paying for it, and thus enjoy the use of another road's car at a ridiculously low rental. But the evil is partly met by the requirement that a higher charge ($1 a day) shall be made after the car has been kept by the borrower more than thirty days."

149 *Testimony of T. C. Cooper.*

T. C. COOPER, called for the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. KRAMER:

Q. Give your name?
A. C. P. Cooper.
Q. Where do you reside?
A. St. Louis.
Q. What position do you hold?
A. General superintendent at St. Louis of the Southern Railway.
Q. How long have you occupied that position?

A. From June 1st, 1905.

Q. What has been the extent of your experience in the railway service?

A. I have been in the service of the Southern Railway for 19 years.

Q. In what capacity.

A. Clerk; paymaster; auditor; assistant to the general manager, and general superintendent.

Q. How long have you been stationed at St. Louis?

A. Since January 1st, 1901.

Q. From that time to the present time what positions have you occupied?

A. Assistant to the general manager and general superintendent.

Q. During that time have you been familiar with the railway situation in East St. Louis?

A. I think so.

Q. Have you been familiar with the manner in which hay has been shipped from this market, from June 1st, 1903, up to February 1st, 1905?

A. Yes, sir.

Q. I would like to have you explain in a general way the different manners or modes in which hay is shipped to and from this market. Describe the different methods.

A. On what?

Q. I mean to the southeast.

A. What we term a through shipment, that is, when billed from a point in Illinois to the southeast, reaching us via the Wabash at Brooklyn, the car would be switched to our Denver side yard and there placed in a train for the south.

150 Q. That you call what?

A. A through shipment.

Q. What other modes of shipping from East St. Louis to the southeast?

A. Well, there is what we call a reconsigned shipment, which requires the car to be carried to the warehouse. It is there assorted and reloaded and forwarded to the southeast.

Q. That you call a reconsigned shipment?

A. Yes, sir.

Q. What other mode of shipment is there from here?

A. There are shipments that I presume you would term St. Louis shipments, that——

Q. I mean to go to that territory?

A. I was going to say, that originate at St. Louis, so far as the Southern Railway is concerned.

Q. What is the difference between a local shipment and a reconsigned shipment, if you know; what is known as a reconsigned shipment, to distinguish it from a through shipment?

A. Why, more service; from a transportation standpoint, requires twice as much,—five times as much service, you might say, to handle a reconsigned shipment as it does a through shipment.

Q. What is necessary on the part of the shipper; what must he do

to have the benefit of the rate, the one cent less rate on the reconsigned shipment? In what way do you make reconsigned shipments?

A. Well, I am not familiar with the rate situation; that is beyond my jurisdiction.

Q. I want to get at this: He must make his reconsigned shipment on an expense bill, must he not?

A. Yes, sir; he has to present to the Southern an expense bill which shows he has received into his house a certain amount of freight, which entitles him to reship an equal amount.

Q. Then reconsigned shipments are made upon freight which has borne one transportation charge into East St. Louis?

A. Yes, sir.

Q. You are familiar with these charts, aren't you? (Referring to maps exhibited in the court room.)

A. Yes, sir.

Q. I would like for you to take this pointer and let me inquire as to the movements necessary; show the movements of a car
151 of hay on a through movement. We are introducing this testimony for the purpose of showing that even upon the theory of the Interstate Commerce Commission the extra service performed is more than the extra rate charged. For illustration, Mr. Cooper, suppose a car coming from the Wabash Railroad Company a through shipment to the southeast, state where it would be delivered to the Southern Railway Company?

A. It would be delivered to the Southern on the interchange track in the Brooklyn yard at the point marked B; from A to B.

Q. Coming from the Wabash Railroad Company?

A. Yes, sir.

Q. Now after the car is placed upon the interchange track of the Southern in the Brooklyn yards, what movement is required by the Southern Railway? What movements are required?

A. The car *as* picked up at this point by a switch engine from the V. & C. belt and taken direct to the Denverside yard.

Q. After it is placed in the Denverside yard what is done with the car?

A. It is switched into a train for the south.

Q. For the southeast?

A. The southeast.

Q. How many movement- are required on the car received from the connecting carrier at the Brooklyn yard to the train for the southeast?

A. Two.

Q. I want to take the first. What engine receives the car from the Wabash and takes it to the Denverside yard?

A. Why, it is the switching crew that we call the "V. & C. long run." It is the crew that is generally assigned to this service.

Q. Would the same engine place the car from the track of the Denverside yard to the train for the southeast?

A. The same engine that—no, the yard engine at Denverside places the car into the train.

Q. An engine working exclusively in the Denverside yard?
A. Yes, sir.
Q. Now take this chart, Mr. Cooper, and explain the movements required to reconsign a car from the Wabash Railroad company, consigned to the warehouse of the petitioner in this city on the track of the Southern Railway.
152 A. The car delivered to the Southern Railway by the Wabash at Brooklyn is picked up and brought to what we call the 6th Street yard; the car is there, the cut—is there broken up.
Q. That requires one movement, to take it to the 6th Street yard?
A. Yes, sir.
Q. Does that engine have anything more to do with that car?
A. No, that engine has performed its service when it places the car at the 6th Street yard. The engine regularly assigned to service at that yard places that car at the warehouse.
Q. Aren't there two moves——

Mr. WHITNEL: Don't argue.
Mr. KRAMER: I want to ask him as to the movements required. Isn't there one engine movement required to break up that cut and place it on the track in the 6th Street yard?

A. Well, I term that as one movement; the engine that breaks the cut up throws this car into the track where the cars are held; places it at the 6th Street yard.
Q. How does it then get to the warehouse of the petitioner, the St. Louis Hay & Grain Company?
A. The 6th Street yard engine places the car at the warehouse.
Q. How many movements are required in doing that?
A. Three.
Q. Three movements after it is received from the railroad, in getting it to his warehouse?
A. Yes, sir.
Q. What kind of a car is it that brings that hay to the warehouse?
A. Well, it is ordinarily a car of the connecting line?
Q. Is it necessary to return that car?
A. Certainly it is.
Q. Take that back to the connection?
A. Yes, sir.
Q. Now take this chart (referring to another chart, or map) and explain the manner in which the empty car is taken from the warehouse located on the track of the Southern Railway Company, back to the connecting carrier?
A. As I understand the matter, as soon as the car is released at this point it is switched to the hold track in the 6th Street yard,
153 and then carried to what we call the Dike yard, where all empty cars are assembled for the return movement home.
Q. What is done with it in the Dike yard?
A. It is there placed——
Q. Where is the Dike yard? Indicate on the map.
A. The Dike yard is here. (Indicating on map.)
Q. Down at the point marked with the letter D?

A. Yes. sir. It is then switched into a cut for the return movement to Brooklyn.

Q. Then what is done? How does it get to Brooklyn from there?

A. After the car is switched into the cut at the Dike yard for the return movement to the connecting line from which we received the car at Brooklyn, it is picked up at the point marked D on this map and sent to the point marked F, around another belt line.

Q. How many movements are required to return that car from the warehouse back to the connecting carrier?

A. Eight back to Brooklyn; eight moves back to Brooklyn. Then after the car is taken to the Brooklyn yard, it is there broken up in the Bro-klyn yard and placed for deliver- to the Wabash Railroad Company.

Q. Now I want to take the movement in case that the petitioner asks for a reconsignment; asks that we furnish a car to be loaded to go out. What movements are required in that case?

A. If we receive an order from Mr. Dye, or the St. Louis Hay & Grain Company for a car,—all empty cars for service of this character are kept in this yard at the Dike, from the point marked A to B. It usually happens that Mr. Dye specifies what kind of a car he wants to the yardmaster; the Dike necessarily has to switch out the car that Mr. Dye wants, or the character of car that he wants, and it is then brought to the 6th Street yard and placed in that yard. That part of the service is performed by this engine, the engine assigned to the 6th Street yard picks this car up and places it at the warehouse; that requires to that point three movements by two different engines—by three different engines.

Q. Then what is done after the car is loaded?

A. The car is loaded and then taken out of the warehouse and placed back at 6th Street.

Q. Then what?

154 A. It is switched into a cut that goes to Denverside for the outbound movement.

Q. Then what?

A. It is thrown into what we call the hold track at Denverside until the final destination is determined upon by Mr. Dye. As soon as he loads this car he gives us shipping instructions to Chattanooga, and before the car leaves Denverside we generally get from him through our commercial agent instructions as to the proper destination of the shipment. In the meantime this car has to be held on the hold track at Denverside. When we get these instructions the car is then delivered to the switching crew and placed in the train for the southeast.

Q. Does the chart explain and show the different movements that are required in getting an empty and placing it into the train for the southeast?

A. Yes, sir.

Q. Is that true of all the charts you have explained here? Do they all show the various movements required?

A. I think so.

Q. As indicated on the plat?

A. Yes, sir.
Q. Do you know where the Union elevator is located?
A. The Union warehouse, yes, sir.
Q. Where is it located?
A. On the Wiggins track.
Q. Has the Southern Railway any connection with this warehouse?
A. No, sir.
Q. In case of a shipment from the Union warehouse to the tracks of the Southern Railway Company, what movements are required, commencing with the securing of an empty and then moving the loaded car to the Denverside yard? Illustrate the various movements?
A. The warehouse company makes request on the Wiggins Ferry Company for an empty car to be placed at that warehouse. An order is given to the yardmaster at the Dike yard, and he looks over the yard and finds an empty suitable for that particular shipment, and places it on the track that holds all cars for delivery to the Wiggins Ferry; the car is moved up to the connection of the Wiggins Ferry, at what they call their Garden yard. After the car reaches the Wiggins Ferry Company yard it is necessary for the Wiggins Ferry to break up that cut and switch this car to a point in their yard,
155 the track termed the hold track, and it is subsequently moved to the warehouse.
Q. Illustrate each movement, if you can, as shown on the chart.
A. That would get the car to this point. (Indicating on chart.)
Q. After the car is loaded, how does it pass from the warehouse to the train for shipment away?
A. The Wiggins Ferry Company can bring the car out from this warehouse at the point E to F, and switch the car out into their Garden yard into a cut for the Southern Railway. In this cut there may be forty cars, and this will perhaps be the only car for the Southern; the rest may be for industries on the Southern. That car would then be moved into our Dike yard, and the cut would be broken up and this shipment of hay for the south would be switched out on the track with these cars for the Denverside yard; then when the Denverside cut is ready the engine takes this car from the point marked I around the belt to Denverside to the point marked J.
Q. What is done with it there?
A. The car is then picked up by another engine and switched into its proper train for the south.
Q. As I understand it, this plat was —. In that respect the plat is wrong?
A. In that respect the plat is wrong. I will make the correction.
Q. Well, are the movements as indicated on that plat, with the exception of the last one, the actual movements in securing an empty and placing it at the warehouse and taking the loaded car and placing it in the train for the southeast?
A. Yes, sir.
Q. Do you know, Mr. Cooper, what length of time is required from the time that the empty car is secured, in the case of a recon-

signment from the warehouse on the tracks of the Southern Railway Company and until that car is placed in the train for the southeast?

A. Well, from the Union warehouse?

Q. No, I say in case the St. Louis Hay & Grain Company is making a reconsignment from the warehouse located on the tracks of the Southern Railway Company at 10th Street warehouse?

A. Yes, sir.

156 Q. What length of time is required, on an average?

A. From three to five days.

Q. From three to five days that car is in use?

A. Yes, sir.

Q. From the time the empty is secured until it starts out in the train?

A. Yes, sir.

Q. What length of time is required in the case of a shipment from the Union warehouse, from the time the car is secured until it goes out in the train to the southeast?

A. About four days; it will average four days.

Well, I presume you might say six, because the character of the service is entirely different. We have no jurisdiction over the car after it is delivered to the Wiggins Ferry Company. I am not in position to say what length of time it takes the Wiggins Ferry to perform their part of the service. I know from the time we deliver that car until we get back is approximately four days.

Q. For the movements made by the Wiggins Ferry Company there is a charge made against us, isn't there?

A. $1.50.

Q. It was $1.50?

A. At the time of this suit.

Q. That the Southern pays to the Wiggins Ferry Company?

A. Yes, sir.

Q. They have to pay it?

A. Yes, sir.

Q. You say that charge now is $2.00?

A. My understanding, yes, sir.

Q. Have you made any calculation what a car is reasonably worth per day while in this service?

A. I know what we estimate the earning capacity of a car; what we term the earning capacity of a car of the Southern Railway is——

Q. What is the earning capacity of a car, or was it during this time?

A. About $2.00 to $2.50; was at this time.

Q. You call that the earning capacity of the car?

A. Yes, sir.

Q. Do you know how they arrive at that, in a general way?

A. Yes, sir.

Q. In what way?

A. The auditing department have prepared statistics which

157 show that is the earnings of each car during the period which you have under discussion.

Q. From June 1903, to February, 1905?
A. Yes, sir.
Q. Have you made any calculation upon the value of a car per day, from any other standpoint than simply the earning capacity of the car to the Company?
A. That would represent, as far as my information goes, the earning capacity of these cars for the year 1905. I know what it is exactly.
Q. What is it?
A. $2.02 per day per car.
Q. What are these cars, such as are used in the shipment of hay, worth, Mr. Cooper?
A. About $800.00, under present market conditions.
Q. Now what would be the interest on that sum, say at 5 per cent?
A. $40.00 a year.
Q. Do you know what the wear and tear of a car of that kind is per year?
A. The depreciation is figured at 6 per cent.
Q. You say figured. By whom?
A. Well, that is the rule of the master car builders' association of America; all railroads estimate the depreciation of a car at 6 per cent.
Q. Do you regard that as a fair estimate of the depreciation of a box car?
A. Yes, sir.
Q. How much would that be per year?
A. $48.00.
Q. Do you know what it costs, or did cost the Southern Railway Company during the period of time covered by this investigation to keep a car in repair per day?
A. Yes, sir, I do. For the year 1902 the cost of repairs per car on the Southern was $70.32.
Q. Per year?
A. Yes, sir. For 1903 it was $72.04; for 1904 $69.41. Which would make an average cost of 23½ cents per day for repairs.
Q. That is what it actually cost the Southern Railway Company to keep its cars in repair?
A. Yes, sir.

158 Q. What would be the total actual cost, then, to maintain a car, taking into consideration the interest on the capital invested, the depreciation and the cost of keeping in repair?

A. I figure the cost at 52 cents per day.
Q. That is the actual cost of maintaining a car?
A. To the best of my information, yes, sir.
Q. Judge Prouty in his opinion mentions the fact of the rental of stock cars at $6.00 to $8.00 per month. Do you know whether or not stock cars during the period of time covered by this investigation could have been rented for any such figure?
A. I know that the Southern did not rent any at that figure during that period, and I do not know that they could have been rented at that figure. I have my doubts about it.

Q. Well, could such cars as are used for the shipment of hay have been rented at any such figure?

A. No, sir.

Q. Counting the rental of such cars at $10.00 a month, what would the cost be, Mr. Cooper, per day?

A. About 40 cents per day.

Q. Under these rental contracts is the Company required to keep the cars in repair?

A. Generally, yes, sir.

Q. What would that cost the Company?

A. That would make the cost about 63½ cents a day.

Q. If the Company were to rent cars?

A. Yes, sir.

Q. What would you say, then, Mr. Cooper, that a fair charge would be per day for these cars while in the defendant's service?

A. Taking all these matters into consideration, I should say they were worth $2.50 a day to the Southern.

Q. I don't mean what they are worth to the Southern. I mean what do you think a fair charge would be, taking into consideration the actual cost of maintaining the cars, what the car could earn for the Company.

A. Well, I figure the earning capacity of the car at $2.50 a day, and the cost of repairs and interest 52 cents, making $3.02 a day.

Q. Well, I do not care for that. If you can give us an estimate of what you think a fair charge would be; if you have come to any conclusion upon that point?

A. I have not.

Q. Of what in your opinion would be a fair charge.

A. I have not given that question any consideration. I
159 know what a car is worth, and I know what it costs to maintain a car, and I know there are always times when there is business offering in which we could apply these cars that are detained in this particular service.

Cross-examination by Mr. FARRELL:

Q. As far as the National Warehouse of the St. Louis Hay & Grain Company is concerned, you have an advantage over other roads on account of it being located on your line, do you not?

A. Yes, sir.

Q. As far as the Union warehouse is concerned, you have no such advantage?

A. No, we cannot reach it with our own tracks.

Q. The railways of East St. Louis stand alike in reference to that Union warehouse, do they not?

A. In what respect?

Q. Well, as to reaching it when called for?

A. That all depends upon the Wiggins Ferry Company handling the cars.

Q. That is what I meant.

Q. Now the Wabash Railroad connection with the Wiggins Ferry Company is north of the Union warehouse, isn't it?

A. Yes, sir.

Q. What do you think the distance is from that connection down to the Union warehouse?

A. I do not know.

Q. Are you willing to say approximately even?

A. No, I could not say, because I never investigated.

Q. Do you think a half mile?

A. I do not know.

Q. The hold track of the Wiggins Ferry Company belt line, where the Wiggins Ferry Company takes their cars in the first instance from the Wabash connection, itself is south of the Union warehouse?

A. I don't know where the Wiggins Ferry Company interchanges business with the Wabash.

Q. I did not ask you that. They must get the car in the first instance——

A. Are you asking about cars delivered to the Southern Railway by the warehouse.

Q. Just answer the question I ask you. I asked you
160 whether or not the hold track, so-called, of the Wiggins Ferry Company, was not itself south of the Union warehouse?

A. I don't know where the hold track of the Wiggins Ferry Company is.

Q. Well, you do know that if a carload of hay were to be transferred from the Wabash railroad up here by the Wiggins Ferry to the Southern Railway, that it would be taken from north of the Union warehouse to a point south of the Union Warehouse by the Wiggins, do you not?

A. Yes, sir, it would.

Q. There must always be one start and one stop to make a distinct movement?

A. Yes, sir.

Q. Are there any obstructions on that track leading down from the Wabash Railroad to the Southern, on the Wiggins track?

A. What do you term obstructions?

Q. Can a train move right along?

A. No, sir, it cannot; it would have to cross the tracks of a dozen railroads.

Q. Aren't you mistaken about that? Does the Wiggins Ferry Company allow any of these railroads to cross its tracks?

A. I will except the Southern Railway belt line.

Q. I am not excepting that at all.

A. I do not know anything about the Wiggins Ferry conditions at all.

Q. Then I wish you would try and find out why it was necessary to make so many different movements where there are no obstructions in the way. But that is a matter I do not care to pursue any further. I want to speak now in reference to the earnings of a car. I do not understand you to state anything any different to what Mr. Hayes stated yesterday.

A. I did not hear Mr. Hayes' testimony.

Q. Well, you gave the same figures, $2.02 per day.

A. That is the figures furnished me by the auditing department.

Q. Do you have any information how they are arrived at?

A. I have not, any more than I know the general method of such calculations.

Q. As far as you are concerned, you don't know whether or not that is right, except as they tell you?

161 A. I have no right to question the correctness of these figures.

Q. You have no right to say that you have any personal knowledge of it?

A. I have a right to say that I have verified the calculations and know they are right.

Q. How did you do that?

A. Mr. Hayes gave me the figures he gave you, and I went over them with him.

Q. You also said you would pay for a box car such as used for hay about $800.00, at the present time?

A. Yes, sir.

Q. Don't you think you are getting cheated?

A. I do not.

Q. Do you know of any box car which is bought by the Company today that cost- $800.00?

A. I can give you the exact figures what they cost.

Q. I wish you would do so, and describe the car.

A. Under a contract recently made by the Southern the average cost of a box car is $766.79.

Q. That would not be $800.00.

A. The air brake equipment is purchased separate, and paid for independent of this contract. The air brake equipment cost approximately $35, that part of it that we buy separately, under separate contract.

Q. Explain to the Court what kind of a box car that is?

A. That is the standard box car. I don't know that I can describe it, any more than it is a standard box car.

Q. Of what capacity?

A. 60,000.

Q. Have you not many of 40,000 pounds?

A. Oh, yes, we can build them 40,000 capacity.

Q. What is the length of a standard car?

A. 40 feet; 36 feet; I may be mistaken about that; I have not got the contract here; I cannot tell you; I have got the information in my office.

Q. I suppose you could not give the other dimensions of it, either?

A. No, I don't know the dimensions of the car.

Q. Don't you always purchase 80,000 pounds capacity cars for the use of grain?

A. Well, if we have bought any recently; I don't know that we have.

Q. It is true, is it not, that cars you would not ordinarily

162 use for grain because they have not sufficient capacity, can be used for hay, because a load of hay compared with grain is comparatively light?

A. Yes, sir.

Q. Where do you get your information of the cost of box cars,—from the books of the Southern?

A. No, just from memoranda that I have in my office of the contracts.

Q. Where do these memoranda come from?

A. Furnished by the Company.

Q. Well, the "Company" is a pretty comprehensive term. What office furnishes that?

A. The assistant secretary.

Q. That cost is somewhat more today than it was in 1903, isn't it?

A. Yes, sir.

Q. You have given testimony in regard to maintaining in repair different cars, or cars in general. From what department did you get that?

A. From the reports compiled by the auditing department.

Q. In other words, do you get that from the auditor's department of the Southern?

A. I do, yes, sir.

Q. Are you acquainted with what it contains? That is, what different things go into the cost of maintenance of equipment?

A. That is the average cost of a car, per car, for repairs.

Q. Are you aware that the Southern, in case of a wreck, or the destruction of a car, or the replacement of a car, charges that to maintenance of equipment?

A. I am not.

Q. Do you know how that is?

A. I do not.

Q. If they charge such replacement to maintenance of equipment, that would increase very much the maintenance of equipment per car from what it would be were new cars not charged into that account?

A. The figures I gave you were outside of the replacement account.

Q. Do you know that?

A. That is as far as I know; I only tell you what I know.

Q. You don't know if the books show that what you say now is true?

163 A. I am not the purchasing agent.

Q. Can you state to the Court that it does not include the replacement of cars that have become wrecked in such a manner that they cannot be used afterwards?

A. If the information that has been furnished me is correct it does not include the replacement of cars.

Q. Has anybody told you it does not include them?

A. Yes.

Q. Who?

A. The auditing department, Mr. E. H. Kemper.

Q. What did Mr. Kemper say about that? How did you happen to ask for this information?

A. I have a right to know.

Q. Did you ask him for it?
A. I did.
Q. When?
A. Day before yesterday, by Western Union message.
Q. Can you produce a copy of that message?
A. I can.
Q. I would be very glad if you would produce it. Did he reply by wire?
A. He did.
Q. Can you produce a copy of that reply?
A. I can.
Q. Will you do so in this case?
A. I will.
Q. I would be glad to have you do so.

Testimony of C. G. Walker.

C. G. WALKER, called for the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. KRAMER:

Q. Please give your name?
A. C. G. Walker.
Q. What is your business?
A. Freight agent of the Southern Railway Company.
Q. Where?
A. At East St. Louis.
Q. How long have you been stationed here?
A. Since January 1st, 1905.
Q. What experience have you had in railroad service?
A. Transportation service?
164 Q. Yes?
A. Handling traffic?
Q. Yes?
A. Why, I have been local agent here for the company handling traffic, since February 1st, 1905.
Q. What other experience have you had in railroad service besides that?
A. I have been messenger boy in local freight office, and passed on up through various tasks up to agent.

Mr. KRAMER: With the promise that I will show the conditions to be the same, practically the same now, I want to ask Mr. Walker to demonstrate how switching movements are made on these various shipments.

The COURT (to counsel for petitioner): Do you dispute that these movements occur as outlined on that chart?

Mr. FARRELL: We expect to show just exactly what movements are made, so far as the warehouse of this complainant is concerned.

The COURT: I asked if you disputed what the witnesses have said and what the charts show, in regard to these movements?

Mr. FARRELL: We expect to show it very different from what that testimony indicates.

Mr. KRAMER: Well, I desire to go through with all of our transportation witnesses who know and are familiar with these movements. I want to take the agent now, and follow up with the persons who actually make them, and show what these movements are.

The COURT: Go ahead.

By Mr. KRAMER, continuing:

Q. Now, Mr. Walker, do you know the different modes in which hay is shipped from a point north to this market, and from this market to the southeast?

A. Yes, sir.

Q. Describe them briefly.

Q. The first would be a through shipment.

Q. What is that?

A. A shipment coming to us from a connection billed through to final destination, showing full billing instructions in regard to the consignee and the final destination to enable us to handle the car immediately.

Q. Now I wish you would explain briefly just in what manner the billing comes to your office. That is where the transaction takes place?

165 A. Yes, sir.

Q. State just what is done at your office on a through billing.

A. Do you want me to follow the movement of the car?

Q. No, no, I am just talking about the billing now.

A. The connecting line from which we will receive the through load will accompany that load with through billing instructions.

Q. What do you mean by through billing instructions? What is that?

A. It will show the final consignee and destination.

Q. Where will that be in this case?

A. Well, we will take for a sample shipment coming from the connection, billed to Atlanta, Georgia, showing the consignee and destination, the commodity, rate, weight, and freight charges up to East St. Louis.

Q. Now when such a waybill comes to you what do you do?

A. We will rebill the car as per billing instructions shown by the connecting line, and forward it.

Q. With whom, so far as the Southern Railway is concerned, do these transactions take place? With whom do you deal in that regard?

A. Directly with the transportation line from which we receive the shipment.

Q. Do you have anything to do with the consignor or the consignee in that transaction?

A. No, sir.

Q. Do you understand what a reconsigned shipment is from here?

A. Yes, sir.

Q. Explain that?

A. A reconsigned shipment is a shipment billed showing destination at East St. Louis.

Q. Explain the manner in which the billing is made in such a case.

A. Say a hay shipment of that kind comes to us from a connection——

Q. Just say how you do the billing?

A. That shipment would be rebilled through our commercial agent: I as the local freight agent would not know how it had been previously billed into East St. Louis. An expense bill covering the original movement into East St. Louis would be shown to Chairman Frink, to establish the fact that that shipment outbound was
166 entitled to the reconsigning rate; then our commercial office would issue billing instructions to the local office accordingly.

Q. Well, what would those instructions be?

A. We would then give a billing on the shipment, billing it from East St. Louis, say to Atlanta, Georgia, showing the consignee, and Atlanta, Georgia, destination.

Q. In making this reconsigned shipment, with whom do you deal?

A. In making this reconsigning shipment—the local freight agent or the commercial agent?

Q. Either one of you?

A. We deal with the shipper at East St. Louis.

Q. Do you have anything to do with the railroad company—the initial line which brought the freight in?

A. No, sir.

Q. Is there any other mode in which hay may be shipped from here, say to Atlanta?

A. Yes, sir.

Q. What other?

A. As a direct East St. Louis shipment.

Q. We have been calling that the local rate from here?

A. Yes, sir.

Q. What is the local rate from here, or was during this time, if you know?

A. Well, I don't know of my own personal knowledge, because I was not here.

Q. Well, I don't care for that. I wish you would take a pointer and get where you can illustrate on this chart, Mr. Walker, and show us the movements required on a through shipment received from the Wabash Railroad Company and placed in a train going to the southeast.

A. The delivering line would deliver the car into our Brooklyn yard.

Q. Illustrate that by saying from A to B.

A. Well, we will say for example the Wabash road would deliver

a car from about A into the Brooklyn yard to the Southern at B. The car would be handled by our long V. & C. Belt engine in a cut of cars from the Brooklyn yard B, around our V. & C. belt connection and up our main track into our Denverside yard C.

Q. That is the only movement made by the Southern?

A. Yes, sir. The cut of cars taken with this load would be
167 broken up by our east side Denverside engine, and that car would be placed in a train and forwarded to the destination as shown on the through billing.

Q. Then how many movements would be required on freight received by the Southern from a connecting carrier to place it in a train for the south, on the part of the Southern?

A. Two moves on the part of the Southern Railway switch engine.

Q. Take up the next chart, if you please. I wish you would illustrate by this chart the movements required on the part of the Southern Railway, receiving a car from a connecting railway, say for illustration the Wabash Railroad Company, and placing it at the warehouse of the St. Louis Hay & Grain Company at 10th Street on the tracks of the Southern Railway Company?

A. That would be started, in the switching movement, being handled by the Wabash engine at the point A in the Wabash yard and delivered in the Southern Railway yard at B; that car would be accompanied by billing instructions; if it was to move to the National warehouse, say, of the St. Louis Hay & Grain Company, the National warehouse of the St. Louis Hay & Grain Company at East St. Louis, it would not carry any freight charges of any kind. The car would then be handled on that billing by the long V. & C. belt engine from the Southern Railway Brooklyn yard around our V.. & C. belt and into our 6th Street yard. The following morning the 6th Street yard engine would handle the cut containing that car and place it into the cut of cars delivered to the National warehouse; the same engine would handle this cut and place it at the National warehouse.

Q. In getting that car from the Wabash and placing it at the warehouse, how many movements would be required by the Southern?

A. There would be three.

Q. Is the difference shown of these various movements on the chart there?

A. Well, from A to B, from the Wabash yard to the Southern yard, would be about,—I see it is shown here, a distance of 8/10 of a mile.

Q. What is the next movement?

A. From the Brooklyn yard B, to C, the 6th Street yard, the distance shown is 7 miles; from the 6th Street yard C, to D,
168 where we would break it up, is 2/10 of a mile; from D in the yard to E, the track of the National warehouse, as shown, is 6/10 of a mile.

Q. Are those about correct?

A. Yes, sir.

Q. Take the next chart. In what manner, in what kind of cars would these shipments so consigned to the warehouse, go?

A. In what train of cars?
Q. No, I mean in what kind of cars, foreign or——
A. Oh, yes, foreign.
Q. Would it be necessary to return that car?
A. Yes, sir.
Q. Explain how that car is taken back from the warehouse to the Wabash Railroad Company?
A. After the car has been unloaded, the empty is switched into our 6th Street yard to C; there it would be placed in a cut of cars being made up for handling in our Dike yard. After this cut of cars has been made up at the 6th Street yard, the 6th Street yard engine would handle it from the 6th Street yard C down into the Dike yard D. The cut containing that car, after arriving at the Dike yard would be switched by one of the Dike engines, and the empty car would be placed for handling around the V. & C. belt for home. This cut would then be handled by long V. & C. engine around the V. & C. belt into our Bro-klyn yard district, where the cut would be broken up and the empty car would be placed into a cut of cars for delivery to the home road, in this case the Wabash.
Q. Now the movement of breaking up that cut and placing the car back to the Wabash is not shown on that chart?
A. Well, that is shown—here is where the breaking up would be, in the yard district.
Q. That breaking up is not shown on that plat?
A. No, sir.
Q. That is the only extra movement more than the plat shows?
A. Well, after the cut for delivery to the Wabash has been made up, it would be handled by the long V. & C. engine, from the Southern Railway yard at Brooklyn, at F, over to the Wabash Railroad yards G.
Q. Then the movements are shown correctly on the chart—in other words, the chart correctly indicates the movements to be made?
A. Yes, sir, with the exception of handling from here in there.
169 Q. Except that additional move in the Brooklyn yard?
A. Yes, sir.
Q. How about the distances there as indicated; state whether or not they are substantially correct?
A. Yes, sir, I think that is about correct.
Q. Take up the next chart, now. Suppose, now, a reconsignment is made from the National warehouse, I would like for you to show, under ordinary circumstances, what movements would be made in getting an empty car and placing it at the warehouse, and after it is loaded taking it to the Deverside yard and placing it in a train.
A. That is, an empty car placed at the National warehouse for loading and forwarding over our line?
Q. Yes.
A. An order would be given to the Dike, and the Dike switch engine would switch the number of cars required from our storage track in the Dike yard and place them in a cut of cars for movement to our 6th Street yard.

Q. That is illustrated by what on the plat?

A. Well, from A to C, our 6th Street yard, these movements are. The cars would then be handled in the Dike yard A to the 6th Street yard C, by the engine and left in that yard. Here the cut would be broken up by the 6th Street yard engine, and the empty car placed in a cut of cars for handling from the 6th Street yard C to the National warehouse D. This cut of cars would then be handled from the 6th Street yard C by the 6th Street yard engine out here and placed into the National warehouse D. After the car had been loaded and billing surrendered, the 6th Street yard engine would handle it from the National warehouse D down to the 6th Street yard C, where it would be switched into a cut of cars for handling from the 6th Street yard C to our Denverside yard G. This cut would then be handled from the 6th Street yard into the Denverside yard G. The billing accompanying this car which has been furnished by the National warehouse would not permit us to immediately forward the car. It would be necessary for the Denverside east end engine to switch this car out of that cut and place it on our east bound hold track. Definite billing instructions regarding this car would be received from our commercial office. After these billing instructions had been received it would be necessary to switch the car off of the east bound hold track and place it in the train for forwarding.

Q. Now does the chart indicate these movements that are
170 required in performing that service. State whether they are correctly indicated on the plat?

A. Yes, sir.

Q. Observe the distance as marked for each movement, and say whether they are correct, Mr. Walker.

A. Well, I could only answer that in a general way. I have not determined the correct distances on that, but I think they are nearly correct.

Q. Put up the next plat, please. Suppose there is a reconsigned shipment from the Union warehouse to go over the Southern Railway, the Southern to furnish an empty car. Explain the movements required.

A. The Dike would receive an order to send an empty car to the Union warehouse, located on the Wiggins track. He would switch out the number of cars required from our Dike yard A, and place them in a cut of cars to be delivered to the Wiggins Ferry Company. This cut of cars would then be handled from the Dike Yard A into the Wiggins Ferry yard; I don't know whether that is intended for a C or D (referring to chart).

Q. Do you know the movements made by the Wiggins after it is placed in the Garden yard, until it gets back?

A. Only in a general way.

Q. Well, if you are not familiar with them I will skip those movements. If you do know the movements you might mention them. I will let Mr. Woodman of the Wiggins explain those movements.

A. Well, I am familiar with them to a certain extent, I under-

stand how they handle the business. I understand this cut of cars delivered by the Southern engine into the Wiggins Garden yard would be broken up by the Wiggins engine, and any cars for the Union warehouse or other industries would be placed on the hold track. They would then be handled from the hold track and delivered to the Union warehouse according to the billing. After the car had been loaded and billing furnished the Wiggins Ferry engine would handle the loaded car from the Union warehouse down into their Garden yard, where it would be switched into a cut of cars for delivery to the Southern Railway Dike yard. After this delivery had been made it would be handled from the Wiggins Ferry Company yard C over into the Southern Railway Dike yard D. Here the cut of cars containing this car would be handled by the Southern Railway switch engine, and this load switched out and placed
171 in a cut of cars for handling from the Southern track yards B to the Denverside yard L. The cut containing this car would then be handled by the Southern Railway switch engine from the Dike yard to the Denverside yard L. After delivery of this cut to the Denverside yard, the Denverside east end engine would switch the cut and place this load into a train for forwarding.

Q. State whether or not the movements, then, as indicated on that plat are correct?

A. Yes, sir, those movements would be correct.

Q. You have only mentioned one movement in the Denverside yard after it gets there?

A. Yes, sir. After the cut had been delivered at the Denverside yard the next move, the cut would be broken up by the east end engine and put in the train.

Q. Do you know about what length of time a car is in use from the time it is ordered to the National warehouse and the time it leaves in the train for the southeast? About the average length of time?

A. Yes, sir.

Q. How long?

A. Four to five days.

Q. Do you know the average length of time that the car is in service from the time it is ordered to the Union warehouse to the time it leaves in the train for the southeast?

A. That would be the time from when we started the empty until we would forward the load.

Q. Yes.

A. That will run from five to six days.

Q. What do you mean by a cut of cars?

A. Why, that would be two or more cars coupled together; commonly called a cut in the yard; on the road that would be termed a train.

Q. What do you mean by "breaking up a cut," or "breaking up a train"?

A. That is handling by the switch engine, according to the destination of the cars; final destination.

Cross-examination waived.

172 *Testimony of George Ripley.*

GEORGE RIPLEY, called for the defendant, being first duly sworn testified as follows:

Direct examination by Mr. KRAMER:

Q. Please state your name?
A. George Ripley.
Q. Where do you reside?
A. East St. Louis.
Q. What is your business?
A. Switchman.
Q. How long have you been engaged in that business?
A. Seven years.
Q. Where?
A. Southern Railway.
Q. At East St. Louis?
A. Yes, sir.
Q. Are you familiar with the railway situation in East St. Louis?
A. I am with the Southern, yes, sir.
Q. You are familiar with its connections also?
A. A great many of them.
Q. In what part of the yards have you been employed—the yards of the Southern Railway—during the time you mentioned, as a switchman?
A. I have been switching for probably about two years: the rest of the time I have been foreman of an engine.
Q. Where were you at work, say from June, 1903, up to February 1905?
A. Along the V. & C. belt.
Q. Did you have charge of an engine on what is called this long switching movement on the V. & C. belt?
A. Yes, sir.
Q. Are you familiar with the movements required on a through shipment of hay received from one of the northern connections?
A. Yes, sir.
Q. What are they, illustrated by this chart.

The COURT: Won't the testimony of this witness be just the same as the preceding witness on this line?

Mr. KRAMER: Yes, sir. Well, I was going into a little more detail as to the time. I was going to show the actual time required, by him.

173 Mr. FARRELL: We are perfectly willing to have it understood that his testimony will be the same as the witness who preceded him.

Mr. KRAMER: The only thing I want to demonstrate now by these persons who make these actual movements, is that it does take the length of time that we contend.

The COURT: I understand they admit he will testify as the preceding witness on these questions.

Mr. KRAMER: I just want this understood, that it is admitted that Mr. Ripley and our other transportation witnesses here—it will be shown that these cars are in actual use while this service is being performed, on an average four days.

Mr. FARRELL: We don't admit anything of the kind. We simply admit that this witness will testify as the preceding one did.

Mr. KRAMER: Well, Mr. Walker just says upon an average the car is in use four days.

The COURT: Well, maybe he will testify to that too.

Mr. KRAMER: I am going to demonstrate that is an actual fact, by this witness, if they don't admit it.

The COURT: Well, they don't admit the fact.

Mr. KRAMER: Well, will you admit that this witness, Mr. Ripley, and the other transportation witnesses, will testify giving the actual movements made, and showing by their testimony the movements to be an average of four days.

Mr. FARRELL: We will admit they will testify substantially alike; that they will testify like Mr. Walker did.

Mr. KRAMER: That is not exactly what I am asking.

Mr. FARRELL: That is all we will admit.

By Mr. KRAMER, continuing:

Q. Mr. Ripley, what length of time does it take to move a car on a through shipment from the Wabash connection, or any other northern connection, to the Denverside yard and in a strain for the southeast?

A. Less than 24 hours.

Q. Suppose the car was sent to the Wabash railroad to be consigned to the National warehouse, what part of the service in getting that down to the warehouse would you perform?

A. I would handle the car from the connection at the Brooklyn yard down to the 6th Street yard.

Q. As far as getting the empty and placing it at the warehouse and getting it away to the Denverside yard, you would not have anything to do with that?

A. No, sir.

174 Q. You would take the car from the connection, down there, and then take the empty back?

A. Yes, sir.

Q. But you would have nothing to do with handling the empty to the warehouse?

A. No, sir.

Testimony of Charles W. White.

CHARLES W. WHITE, called for the defendant, being first duly sworn, testified as follows:

Direct-examination by Mr. KRAMER:

Q. Please give your name?

A. Charles W. White.

Q. Where do you live?

A. East St. Louis.
Q. What is your business?
A. Yardmaster of the Southern Railway Company.
Q. Where are you stationed?
A. At the Dike Yard.
Q. What was your business from June, 1903, until February, 1905?
A. Well, I was yardmaster in the Denverside yard until the month of June; the first day of July, 1903, I went to the Dike, and been there ever since.
Q. You have been at the Dike yard nearly all the time covered by this investigation?
A. Yes, sir, all excepting about a month.
Q. Now taking the movements bringing down—of course the agreement is that he would testify the same as Mr. Walker.

Mr. FARRELL: Yes, sir.

By Mr. KRAMER, continuing:

Q. Now, Mr. White, in case of a reconsignment of hay from the National warehouse, I would like if you would go to the chart and demonstrate the movements required in securing an empty and placing it in the warehouse, and then taking the car from the warehouse and placing it in the train at Denverside yard, and show the average length of time that the car will be in use in performing that service.
A. Well, the method is, this man at the National warehouse will place an order with the yard clerk at 6th Street for so many
175 empties to be loaded over the Southern line for the southeast; he will designate that he wants 36 feet cars; I will proceed to pull the different tracks in the yard and switch out the 36 foot cars off on track 21.
Q. Just point out on the chart. In selecting the cars one movement from A to B. Suppose that the order is for more than one car of this special kind; state whether or not it will require more movements than illustrated there on the chart, in such case?
A. Yes, sir, very frequently we will have the empties stored on four or five tracks; I have had occasion to switch as high as eight tracks; I have switched the whole eight tracks in order to get enough 36 foot cars to fill an order for eight or ten cars of the kind wanted.
Q. Go ahead with your explanation.
A. We put these cars on track 21.
Q. What time would be consumed in that, ordinarily?
A. It would consume a day, you might say, even if I received the order in the morning; if it come in the evening these cars would be placed in this track and forwarded in the morning. In the morning about 8 o'clock the engine would take this cut of cars off of track 21 and set them out in the 6th Street yard; the 6th Street yard engine then takes this cut of cars and places them on the National warehouse track by themselves for the National warehouse; the next morning he would probably order it into his house; it would be picked up by the 6th Street yard engine and placed in his plant; of

course lots of times a car will stand there two days in the 6th Street yard before he would order it in.

Q. What length of time has he—do you know what length of time he is allowed to load the car?

A. 48 hours, without counting this first day.

Q. After that first day he is allowed 48 hours for loading?

A. You see we have lost two days with the car before we can actually get it to him. The first day lost in the Dike yard, and the second day is lost because the car does not arrive at 6th Street until after 8 o'clock, so we cannot start with this car until 8 o'clock the next day. So under the circumstances he can hold that car five days; keep this car out of service 5 days.

Q. He has 48 hours for loading the car?

A. After 7 o'clock in the morning.

176 Q. Of the 3rd day?

A. Of the third day.

Q. After it is loaded, what is done then?

A. This 6th Street engine will pull to the National warehouse and take the cars out of there; take the cut into the 6th Street yard, and there he will switch the cut, separating his cars into the different tracks for the different connections; this load would be placed in the track for delivery to the Denverside yard. When he got his Denverside cut made up he would take his cut and go to Denverside and place it in the Denverside yard.

Q. How long would that take?

A. That would be one more day. Then the engine would take this cut of cars and switch this car into the hold track.

Q. Then what next?

A. Then when the Denverside yard receives the billing on this car from the office they pull the hold track and switch this car into the train for the southeast.

Q. How long does that service require in the Denverside yard?

A. Well, according; the billing probably would get there late that evening or the next morning after the car arrived. The car would arrive in the morning, say about 9 or 10 o'clock, about the time they generally make that delivery. Of course they have got to switch that cut in order to have the track clear for another cut following in at any time. We switch the cut of cars to the hold track because we have got no destination on it after the billing arrives in the evening the car is switched out; and if the billing does not arrive until the next morning, it takes another day for the car in the Denverside yard.

Q. If the billing does arrive in the evening it may be switched into the train that night?

A. Yes, sir.

Q. You say it may consume a day in the Denverside yard?

A. Yes, if it goes in on the hold track.

Q. Do you know what is the custom, or what was the custom during this time, with reference to allowing 48 hours for loading at these warehouses.

A. Well, they ordinarily have to get the car away at the end of the time they are allowed.

Q. What, on the average, then, is the length of time consumed in that service, from the time the empty is received until it goes out in the train?

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A. Well, we consider five days good service.

Q. Suppose a car is ordered to the Union warehouse. Put up the next chart, if you please. Now before you start on that. Does it ever happen that a car is taken immediately from the 6th Street yard and sent to the warehouse?

A. Yes, occasionally.

Q. How often does that occur, if you can tell?

A. Well, I don't know just exactly. Of course it is worked on this plan: Of course all the empties are headed for the Dike. If this man places the order with the yard clerk at 6th Street in time to catch this man on 6th Street with his cars before he delivers to the Dike, he can save us a great deal of switching backward and forward; but at the same time he will probably have to switch his cut over again in order to get this car out.

Q. In the 6th Street yard?

A. Yes, sir.

Q. The little advantage that may be derived by selecting the cars in the 6th Street yard is offset by this extra movement of switching you have mentioned that has to be done in the Dike yard in getting out these special cars ordered when more than one is required?

A. Well, he would not have to if he wanted——

Q. I mean by that, do we gain as much by taking the car in the 6th Street yard occasionally as we lose, which we have not counted here at all, in making this extra movement in selecting cars for him in the Dike yard?

A. Well, we do not gain a great deal. All we would gain would be the trip down with the car in the cut. Of course the trip is made just the same if we have 20 cars for the Dike yard.

Q. Now commencing at the selection of an empty, explain the time consumed in getting it from the Union warehouse away into the train.

A. Well, they would place an order with the Wiggins Ferry for five cars, 36 foot box cars, for the Union warehouse on the Wiggins track. This order would be given to me by the clerk, and I would pull the different tracks, which ever I had to pull in the yard to get the five cars for the Union warehouse. It would take extra work, always does, for the car orders to be placed on the track to be delivered to the Wiggins. I would deliver this cut of cars, with the Union warehouse cars in it, into the Garden yard of the Wiggins.

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Q. How much time would that require, ordinarily?

A. One day.

Q. Do you know how long it is until that car gets back, ordinarily, from the Wiggins Ferry?

A. Four days we consider a good average.

Q. That is a good average?

A. Yes, sir.

Q. How long does it take to get it down to the Denverside yard in the train?

A. That depends on what time of the day it would arrive. If the car would arrive on the track from the Wiggins in the morning, or up until 2 o'clock, or probably 3 o'clock, if we receive that car at 3 o'clock in the evening he will get that car out in Denverside at 7 o'clock that evening and it will catch the night train.

Q. And goes right straight on?

A. Yes, sir.

Q. That would consume about one day?

A. Well, that would consume one day after we received the car. Sometimes this car would be billed out in the evening at the Union warehouse, or probably would not be billed until the next morning and I would not receive the car until the next day sometime.

Cross Examination waived.

Testimony of Mr. Caster.

—— CASTER, the next witness called for the Defendant.

It is agreed by the parties that Mr. —— Caster would testify the same as Mr. White, and he is accordingly not placed on the stand.

Testimony of J. M. Woodman.

J. M. WOODMAN, called for the defendant, being first duly sworn, testified as follows:

Direct-examination by Mr. KRAMER:

Q. Please state your name?

A. J. M. Woodman.

Q. Where do you live?

179 A. St. Louis, Missouri.

Q. What is your business?

A. General yardmaster.

Q. For what Company?

A. East St. Louis Connecting Railway Company.

Q. We have been referring to that as the Wiggins?

A. Yes, sir.

Q. All known as the same?

A. Yes, sir.

Q. How long have you occupied that position?

A. Since the 8th of March, 1903.

Q. You are familiar with the railway situation along the river front in East St. Louis?

A. Yes, sir.

Q. You are familiar with the tracks of East St. Louis Connecting Railway Company?

A. Yes, sir.

Q. It has connections with the Southern Railway Company?

A. Yes, sir.

Q. Do you know the location of the Union warehouse?

A. Yes, sir.

Q. In case of a shipment of hay over the tracks of the Southern Railway to a point in the southeast, the empty car to be furnished by the Southern, I wish you would explain the movement on your line in such a case. Here is a diagram which pretends to locate the Union warehouse, which is south of the Bridge. It shows delivery here of the car to the East St. Louis Connecting Railway in the Garden yards?

A. Yes, sir.

Q. Now can you just explain the movements required in getting that empty up to the warehouse and then getting the load from the warehouse down back to the Southern?

A. The Southern would deliver the car in our Garden yard, and the Garden yard engine would switch the car, the cut, into the track that we call the Big Four track. On that track we put every car that belongs in a certain district which the Union warehouse is in. This car would be put into a track in which we hold cars for the Union warehouse, and it would remain there until the Union warehouse ordered the car to their worehouse, and then taken from that track and set at the Union warehouse. On the return move, as soon as the car was loaded billing would be furnished our local freight
180 agent and he would have the car carded up for the Southern Railway, and we would switch out the car; the car would be taken from the warehouse and put in the Garden yard, what we call track number 9; the Garden yard engine would switch the car from track number 9 into a track with all cars going to the Southern, and it would remain there until we were ready to make delivery to the Southern, and then the car would be taken down into its Dike yards.

Q. Can you tell us the length of time the car would be in service on the tracks of your Company?

A. From three to four days is a good average.

Q. On your line?

A. Yes, sir.

Cross-examination by Mr. FARRELL:

Q. I think the witness has stated that pretty plainly, but if I understand you correctly, you make two moves of an empty car from the time it is delivered by the Southern Railway to you before you in fact place it on the side track for the Union warehouse?

A. Three moves. We take the cars first, after delivery by the Southern, switch it on the track going up in that district. Then we take it with another engine and put it on the hold track, that is, the track that we hold cars for the Union warehouse; two moves; then we take it and place it at the Union warehouse; three moves.

Q. Why is it necessary to make that second move? Why not make that second move include the move to the warehouse?

A. Because the Union warehouse is not ready for the car.

Q. How do you know they are not ready for it?

A. Well, because we place it in that for the warehouse, until they order it in.

Q. You don't know you are moving any car for them at all until they order it?

A. The order is placed for an empty car; when the car comes to our yard, we get another order for the car, to place it at the warehouse.

Q. Then it takes three moves to place the car, the empty car, to the Union warehouse?

A. Yes, sir.

Q. You say, going back, you take the empty car from the Southern into——

181 A. In what we call our number 2 Garden yard.

Q. It delivers it to the Wiggins Ferry Company?

A. Yes, sir.

Q. Then the Wiggins hitches onto that car and hauls it right down to what you call the hold track below the Union warehouse?

A. No, sir, we take it right down into our Garden yard.

Q. Isn't that what you call your hold track there?

A. No, sir, the Garden yard engine will switch that cut in the Garden yard again and place the car on the Big Four track, and move from there up onto the hold track. The cut is separated in the different tracks where the cars belong, and the car moves on up with another engine into the district where that industry is.

Q. Now, with reference to a car that goes to the Union warehouse from the Wabash and from the Union warehouse again to the same road, I suppose the Wabash delivers the car to the Wiggins Ferry in just the same way that the car has to go through by being sent to the Union Warehouse from the Southern?

A. Well, sir, that car moves from their number 2 yard into the Garden yard.

Q. From that point the movement is exactly the same.

By Mr. KRAMER:

Q. You are talking about a through movement from the Wabash?

A. To the Southern Railway.

Mr. KRAMER: I have not interrogated him anything about that. That is not cross examination at all. I have no objection if the Wabash does make——

Mr. FARRELL: I am not talking about the Wabash doing it. It is the Wiggins Ferry Company.

Mr. KRAMER: Well, that is a through movement.

Mr. FARRELL: Well, it is what you call a through movement.

Mr. KRAMER: I have no objection. Go ahead.

By Mr. FARRELL, continuing:

Q. You go down to the Garden with a through car the same as the other?

A. The car would be switched by the Garden yard engine.

Q. Do you mean to say that all cars don't come off the lead of the Wabash road which are delivered to the Wiggins for redelivery to the Southern?

A. I mean to say that the Wabash has got a direct delivery to the

Southern, and they will not pay us a switching charge be-
182 tween the Wabash and the Southern Railway; they deliver their cars direct to the Southern.

Q. Take some road that has not got such a connection. Take the Burlington.

A. We move from the Burlington to the Southern. From the Burlington to the Southern is what we call a regular switching move; belt track; it is not an industrial move at all; it is a move from one connection to another.

Q. On this through car, when the Burlington delivers it to the Southern, what is the first thing you do with it?

A. We take the car from the number 2 yard to the Garden; the Garden yard engine switches that cut and places the car in the Southern delivery track; the next move is made when they get ready to make the Southern delivery, the car moves over into the Dike yard.

Q. So there are three moves of the Wiggins Ferry made with that through car to get from the Southern road to the Burlington?

A. Yes, sir.

Q. Of course that would always be true where the transfer was made by the Wiggins Ferry from one of the northern lines to one of the southern lines?

A. That is the usual method.

By Mr. KRAMER:

Q. The Burlington is the only road that makes delivery to the Southern on through movements, isn't it?

A. Well, the Burlington is one road.

Q. Do you make any to the Southern?

A. Well, we take freight from the west side of the river and deliver it to the Southern Railway.

Q. Do you make deliveries of hay from any other roads that you know of to the Southern except the Burlington?

A. I believe that is about all the railroad- that we make direct delivery to the Southern from.

By Mr. FARRELL, continuing:

Q. With reference to other roads, you transfer cars between all other roads, the Southern being the only exception is because it has its own belt railroad. Is that so?

A. Yes, sir.

Mr. KRAMER: I now offer in evidence each of these plats or charts, which have been referred to by the witnesses.

Mr. WHITNEL: We object to the introduction of these plats, for the reason that they do not undertake to show the general situation with reference to the railway connections and belt connec-
183 tions of all northern and southern lines coming into the City of East St. Louis, and do not illustrate the general situation at this gateway.

The COURT: They may be admitted subject to the objection.

The said plats, or charts, are marked Defendants Exhibits 27 to 31 both inclusive, and are attached hereto.

Mr. KRAMER: I want to introduce in evidence a map of the Southern Railway Company.

Mr. WHITNEL: I do not see the pertinency of it.

The COURT: It may be admitted subject to the objection.

The said map is made a part of the record in this case, and marked Defendant's Exhibit 32, and is attached hereto.

Testimony of Charles B. Adams.

CHARLES B. ADAMS, called for the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. KRAMER:

Q. Please give your name?

A. Charles B. Adams.

Q. What is your business?

A. General agent St. Louis Division of the New York Safety Car Heating & Lighting Company.

Q. Have you had any experience in the railway service, Mr. Adams?

A. Yes, sir.

Q. State what it has been?

A. About thirty years in the operating department.

Q. With what railroad companies and in what particular capacities?

A. Yardmaster, clerk, agent, superintendent; with the Wabash, Reading and Pennsylvania railroads.

Q. Have you made any study of the value of a freight car Mr. Adams, to a railroad company?

A. Yes, sir.

Q. Do you know anything about the per diem charge made between railroad companies?

A. Yes, sir.

Q. I wish you would state how this per diem charge came about; what it is intended for, in a brief way.

A. Prior to the adoption of the per diem charge the railroads interchanged equipment on what was known as the mileage basis.

184 That varied from time to time from one cent—I am speaking now of ordinary box and stock cars—varied from one cent; it was then reduced to ¾ of a cent per mile, while the car was in actual operation. Therefore a road could hold a car indefinitely without any compensation whatsoever to the owner. About four years ago that system was changed. It became so burdensome upon the railroad companies that they were forced to make a change, and the per diem rules were established, which required a vote of three fourths of the members of the American Railway Association to adopt the per diem rule. There was some objection to the rates recommended by the Committee, by reason of the fact that certain

roads having but a small equipment who had been holding freight cars indefinitely for shippers and receivers, knew that it would be a great tax on them to go in and do business or handle their business on different principles. Therefore the American Railway Association deemed it wise to adopt a compromise rate of 20 cents a day. It was known at that time by the Committee and by the members of the American Railway Association that that rate did not compensate the car owner for the use of his car; but merely to bring in the roads that were hanging out that compromise rate of 20 cents was made and adopted.

Q. Well, what is regarded now among railroad people and persons familiar with the value of cars as to that being compensation for the use of a car?

A. No, sir, it does not compensate the owner. That is the general opinion.

Q. Have you made any calculation from the reports of the Interstate Commerce Commission showing the earning capacity of freight cars?

A. Yes, sir.

Q. What calcualtion have you made?

A. In my line of duty as Superintendent of transportation of the Wabash road it devolved on me to keep posted on matters of that kind. I used the reports of the Interstate Commission because they were general, covering all roads, and convenient reference. And if my recollection serves me correctly, the earning capacity of a freight car has varied but a very few cents up or down for the last five or six years. The latest reports that I have looked over were the reports for 1903, showing in round figures the gross freight earnings of the railroads of the United States, a billion, three hundred and some odd million dollars; freight equipment of American
185 railroads — million, six hundred thousand. By dividing the gross freight earnings, as reported by the Interstate Commerce Commission, by 365 days, and that product by the number of freight cars reported by the Interstate Commerce Commission, gives a net result of about $2.14 per day.

Q. The average earning capacity, figured from that standpoint, of a freight car?

A. Yes, sir.

Cross-examination by Mr. FARRELL:

Q. I don't know that I understand you correctly. What earnings did you take in making this calculation—the gross earnings or the net earnings?

A. The gross earnings.

Q. Well, why did you take the gross earnings instead of the net earnings?

A. Because the gross earnings are the earning power of the car.

Q. You take the entire equipment, regardless of whether or not it was employed?

A. Yes, sir, take the equipment as reported by the Interstate Commerce Commission as employed in freight service.

of the southern lines. Take the loaded car from the northern line and follow it until it is delivered to the southern line.

A. I was not quite through with this.

188 Q. That is sufficient.

A. I would like to add a little bit more to that. I say, under our instructions to the receiving line, the Wiggins, there should not be more than one move to the warehouse. If they make any more it is entirely for their own convenience. Now a car coming from some connection and going to the Union warehouse for transfer going south over the Southern lines would be received by the Wiggins Ferry at their connection, with instructions to send the car to the Union warehouse at once for transfer, the contents to be removed from the car and loaded back into the car, within less than an average of three hours, and then is ready to move on to the southeast connection from our warehouse, and we give the Wiggins instructions and billing for this car to go to the Southern Railway; it is loaded and ready at the Union warehouse to go to the Southern Railway on one movement as far as we are concerned. Any extra movements are entirely at the convenience of the Wiggins Ferry Company.

Q. Now take a loaded car that goes right through without being unloaded at your warehouse, and follow it from the northern line to the southern line over the Wiggins tracks?

A. Well, a through car received, which is destined to the south from a northern line connection is handled in the same cut of cars that the Union warehouse cars would be, and as far as I know delivered direct to the Southern when they make their distribution.

Q. Explain about where that car is put in the first instance, after it is taken from the northern line by the Wiggins Ferry?

A. Well, after it is taken from the northern line it is generally thrown into a cut at the end of the north yards, which all the other lines draw shipments out of.

Q. That cut you refer to is on the Wiggins Ferry tracks?

A. Yes, sir. Then they take them to the lower yards for distribution to the southern roads.

Q. You mean the Garden yards?

A. Yes, sir: the Southern and the M. & O. and the I. C. and the L. & N.

Q. In getting the car from the northern line to the southern line state what occurs.

A. They make a move from the northern line to the hold track in the Garden yard and from the Garden yard to the southern line; for all the various southern roads.

189 Q. As far as the Union warehouse is concerned, that describes the movement, in each instance does it, as between a through car and one that is reloaded at your warehouse?

A. Yes, sir.

Q. Now have you some information in reference to cars that were in effect consigned to the Union warehouse and reloaded between June 1st 1903 and February 1st, 1905?

A. Yes, sir.

Q. Have you that with you?

A. I have. (Witness produces paper.) This statement prepared covers all shipments of hay handled by the St. Louis Hay & Grain Company via the Southern Railway between June 1st, 1903, and February 1st, 1905.

Q. Is that statement made up by months?

A. Yes, sir.

Q. Will you kindly give each month separate, the number of cars reloaded, that were in fact furnished to you from one of the southern lines. (Question withdrawn.)

Q. Does that statement show with reference to the furnishing of empty cars, whether or not they were furnished, and to what extent, by southern lines?

A. Yes, sir, it does, the Southern Railway. I did not make it up for the other lines; made it up for the Southern Railway Company.

Q. Does it show the number that were actually furnished by the Southern Railway Company separately?

A. Yes, sir.

Q. Does it also show the number that were furnished by the Wiggins Ferry Company?

A. Yes, sir.

Q. Does it also show the number that were loaded, reloaded right at the warehouse without any empty being furnished by either the Wiggins or the Southern Railway Company?

A. Yes, sir.

Mr. KRAMER: Are you going to ask to introduce this compilation of his?

Mr. WHITNEL: I do not think it is necessary if he explains what it shows, unless it is contradicted.

Mr. KRAMER: If you are not going to introduce it I will ask that he submit it to us after he gets through.

Mr. WHITNEL: That is all right.

The WITNESS: Before going any further I wish to state that the National warehouse was not in operation——

190 Mr. WHITNEL: Don't mix up the National with the Union warehouse.

The WITNESS: This covers both of them. This statement covers both houses.

Q. Have you got them separately?

A. I have got it separate, but it shows—Do you want the Union first?

Q. I would like the Union by itself.

A. For the month of June, 1903, the total number of cars shipped out over the Southern Railway was 36 cars; 3 cars reconsigned after reloading; 33 cars coming from other connections; but no cars furnished by the Southern Railway; 33 pick-up cars.

Q. What do you mean by "pick-up" cars?

A. Empty cars coming to us from all connecting lines.

For the month of July we forwarded south over the Southern 67 cars; 8 cars of these were received under load and reloaded; 59 cars

were pick up cars by the Wiggins Ferry on other rails, coming from connections.

For the month of August, 1903, the total shipments via the Southern was 41 cars; received under load at the Union warehouse 6 cars, and reloaded. Pick up cars by the Wiggins Ferry from connections, 35 cars; none furnished empty by the Southern Railway Company.

For the month of September 13 cars were shipped via the Southern Railway; one car was received under load at the Union warehouse, and 12 cars were pick ups by the Wiggins from connections.

Q. You state one car was received under load. Was that reloaded?

A. Reloaded. And no empty cars furnished by the Southern Railway.

For the month of October 23 cars were shipped over the Southern Railway; received under load at the Union Warehouse and reloaded south, 2 cars; pick ups by the Wiggins Ferry Company 21 cars; no empties furnished by the Southern Railway.

For the month of November, one car was received under load at the Union warehouse and went forward; one was received under load and reloaded.

Mr. KRAMER: You only shipped one car that November?

A. No; there were pick up cars furnished by the Wiggins to the Union warehouse, 9.

191 Mr. KRAMER: You did not give us the number of shipments altogether.

A. Oh, 11 cars was the total shipment; 9 pick up cars were furnished by the Wiggins Ferry from their connections, and received under load at the Union warehouse one car, which went forward south.

Q. Is that the first car that you refer to that is connected with the National warehouse?

A. Yes, sir, that is when we started the operation. No empties furnished by the Southern.

By Mr. KRAMER:

Q. 11 at the Union and one at the National?

A. 10 at the Union. We just started the National in the month of November. In the month of December the total number of cars shipped by the Southern 17; received under load at the Union warehouse and reloaded, 2. Pick-up cars furnished by the Wiggins, none. Received under load at the National warehouse and reloaded, 13. Empties furnished by the Southern Railway, 2 cars at the National.

For the month of January, 1904, the total shipments were 51 cars over the Southern; three cars were received under load at the Union warehouse and reloaded; pick up cars by the Wiggins Ferry Company from connections, 7 cars; received under load at the National warehouse and reloaded, 19 cars. Empties furnished by the Southern 22 cars. Total 51.

For the month of February, 1904, the total number of cars shipped via the Southern was 50 cars; received under load at the Union

warehouse and reloaded, 3 cars; Pick up cars by the Wiggins Ferry, 6 cars; received under load at the National warehouse and reloaded, 35 cars; empties furnished by the Southern, 6 cars; making a total of 50.

For the month of March, 1904, the total number of cars shipped via the Southern was 46 cars; 3 cars were received under load at the Union warehouse and reloaded; pick up cars furnished by the Wiggins Ferry, 9. Received under load at the National warehouse and reloaded, 12; empties furnished by the Souther-, 22 cars; making a total of 46 cars.

For the month of April, 1904, we shipped 26 cars over the Southern Railway. There were no cars received under load at the Union; pick up cars furnished by the Wiggins Ferry, 8 cars; received under load at the National warehouse and reloaded, 5 cars; empties furnished by the Southern Railway, 13; total 26 cars.

192 During the month of May, 1904, we shipped 46 cars south over the Southern; received under load at the Union warehouse, no cars Pick up cars by the Wiggins Ferry at the Union warehouse, 2 cars; Received under load at the National warehouse and reloaded, one car; empties furnished by the Southern Railway, 41 cars.

For the month of June, 1904, we shipped south over the Southern 53 cars. We received under load at the Union warehouse one car. Pick ups by the Wiggins Ferry from connections, 18 cars. Received under load at the National warehouse no cars. Empties furnished by the Southern Railway 34 cars; making a total of 53 cars.

For the month of July, 1904, we shipped south over the Southern 18 cars. Received under load at the Union no cars. Pickups by the Wiggins Ferry from connections and loaded south, 2 cars; received under load at the National warehouse, no cars; empties furnished by the Southern, 18 cars.

For the month of August, 1904——

By Mr. KRAMER:

Q. You shipped out 18 in July?

A. 20 cars, should be.

For the month of August we shipped 24 cars south; 3 cars received under load at the Union warehouse and reloaded south; pickups furnished by the Wiggins Ferry 2 cars; received under load at the National warehouse no cars; empties furnished by the Southern Railway 19 cars; making a total of 24.

For the month of September we shipped south over the Southern 60 cars; received under load at the Union and reloaded, 5 cars; pickups furnished by the Wiggins, one car; received under load at the National warehouse 7 cars, and reloaded south; empties furnished by the Southern 47 cars.

For the month of October we shipped 26 cars over the Southern, received under load at the Union warehouse 3 cars, and reloaded south; pickups furnished by the Wiggins Ferry 2 cars; received under load at the National, one car; empties furnished by the Southern

Railway, 20 cars; making a total of 26 cars. 6 empties were furnished at the National. I did not mention that.

For the month of November we shipped 37 cars south over the Southern; received under load at the Union warehouse, 6 cars, and reloaded south; pick ups furnished by the Wiggins at the
193 Union, none; received under load at the National, and reloaded south, one car; empties furnished by the Southern 30 cars.

For December, 1904, we shipped south over the Southern, 39 cars; received under load at the Union warehouse 4 cars, and reloaded south; pickups furnished by the Wiggins Ferry 5 cars; received under load at the National no cars; empties furnished by the Southern Railway 30 cars; making a total of 39.

For the month of January, 1905, we shipped 25 cars south over the Southern; received under load at the Union, no cars; pickups by the Wiggins Ferry, no cars; received under load at the National, 6 cars, and reloaded south; empties furnished by the Southern Railway, 19 cars; making a total of 25.

Do you want me to give the summary?

Q. If you please.

A. During the period the cars reloaded, that came in under load and were reloaded south, were 166.

Mr. KRAMER: Have you got them separate, at each warehouse?

A. I have not in the summary.

Mr. KRAMER: Well, go ahead. That is from June 1st, 1903 to February 1st, 1905?

A. Yes, sir. Cars, picked up by the Wiggins 231; empties furnished by the Southern 332; making a total of 729 cars.

By Mr. WHITNEL, continuing:

Q. I notice, Mr. Dye, that during the first part of that period the Southern Railway furnished no cars at all, while during the latter part they furnished a great many. Have you any explanation of that?

A. At the time the cars were being furnished cars were more plentiful; they had a large number of cars being built here for the P. N. O. (?) railroad, which they were anxious to have loaded south, and did not want us to load any northern line cars out; requested us at our warehouses not to load them, for they would furnish empties promptly and quickly as asked for, and wanted us to load them.

Mr. WHITNEL: We will submit that statement in evidence.

The COURT: The one you have been reading from?

Mr. WHITNEL: Yes, sir.

Mr. KRAMER: Before this is put in evidence I would like to interrogate him about it.

The COURT: When they get through with him.

Mr. KRAMER: I don't want it to go in evidence until we are through cross examining him.

194 The COURT: There is no hurry.

By Mr. WHITNEL, continuing:

Q. Now you have made an explanation with reference to the movement of cars to and from the Union warehouse?

A. Yes, sir.

Q. Make a similar explanation of the movement to and from the National warehouse.

A. Our shipments reach East St. Louis by the northern lines. We have a standing order with the northern lines to send all these cars direct to the National warehouse by the V. & C. belt as soon as they arrive, and we have instructions to the Southern Railway to accept these shipments and deliver them direct to the National warehouse as soon as they receive them, and the movement from the northern line to the National warehouse, as far as we are concerned, should not be more than one movement. That is, if they accept a shipment from the Wabash on their rails it is not necessary for them to make more than one move to put that car into the National warehouse tracks.

Q. By "them" and "they" you mean the Southern Railway Company?

A. Yes, sir. As to all other moves, that is for their own convenience; where they take more than one lot of cars for the various industries.

Q. Well, now, would a through car be moved at the same time that a car for your warehouse would be, from the connection with a northern line?

A. Through cars are received at the same time that cars for the National are received; they are brought down in the same cut, by the same engine.

Q. That is all right about the movement to the National. Explain it from the National to the main line of the Southern.

A. When we get the car loaded at the National warehouse we offer it to the Southern Railway for southern shipment, with billing instructions to cover; and so far as we are concerned the shipment is practically on their rails at the National warehouse to go direct into the train. If they move it to various tracks it is at their convenience and their time; and under no circumstances should more than one movement be charged to the St. Louis Hay & Grain Company.

Q. Now I want you to explain what business is done by the St. Louis Hay & Grain Company. Just explain the nature of it, and how you do business.

195 A. Do you want me to explain in a general way as to how we reconsign and how we do business throughout the south?

Q. Well, more particularly at East St. Louis, whether you buy hay on track or in the country, or where you buy it?

A. The St. Louis Hay & Grain Company are large operators and shippers of hay from all over the country.

Q. How many carloads a year,—about how many, do they ship?

A. We average about five thousand cars.

Q. A year?

A. Yes, sir.

Q. How many over the Southern?

Mr. KRAMER: He has given this; 729 cars during the period covered by this investigation.

A. In order to move the large volume of hay which at certain seasons of the year has to be moved as we are able to obtain the cars out in the country, and as the people are able to haul it in on account of good roads, we have established our warehouses for the purpose of concentration of the hay here, so that it might be forwarded south at the most convenient time.

Q. Do you buy hay at country points, and also buy here right on the track and also in cars here in East St. Louis?

A. Yes, sir, I do daily.

Q. Which is more——

A. Well, it is about the same. We buy very largely in the country and buy very largely on the market; I could not say which would offset the other; constant receivers from the country, and constant buyers on the market here.

Q. Do you, in addition to this reconsigning business, do you also make through shipments?

A. Yes, sir.

Q. How would you divide the business between these two kinds?

A. Well, on business that we don't concentrate at East St. Louis, which we bill through from country points, of course we destine these shipments to Nashville, Tennessee via the Illinois Central, Mobile & Ohio and the L. & N., and then any for the Southern destined to Chattanooga, Tennessee. That is what constitutes the through shipments that we handle.

Q. Now, when you reload, is the reloaded car any heavier than the load that comes into the warehouse?

A. The average loading, under our system of reloading south will average from 2,000 to 3,000 pounds more per car in the
196 year's business; about that much more tonnage will go in the car south.

Q. What are the rates that applied, that were applied from June, 1903, to February, 1905, on shipments?

A. On reconsigned shipments that statement covers, 4 cents per 100 pounds over the Ohio River rate.

Q. How long have you been obliged to pay that rate on reconsigned cars?

A. Since June, 1903.

Q. How was it before that?

A. Before that we handled the business through the warehouse in the same manner we do now, reloading from northern line cars, and also used north*ing* line cars in the same manner we do now, we consigned hay to the south at 2 cents per 100 pounds over the Ohio river rate.

Q. Was that the same rate which was contemporaneously applied on through shipments, as they have been called in this case?

A. Yes, sir, it was.

Q. So that previous to June 1st, 1903, you did not have to pay anything extra on account of it being reconsigned?
A. No, sir. We handled the cars from the warehouse in the same manner we do now.
Q. Are you acquainted with the way that business is done at points south of here on the Ohio river, Memphis and Nashville?
A. Yes, sir, the Ohio river and Nashville, Tennessee.
Q. Is any extra charge made by the railroads there on account of the reconsigning privilege granted?

Mr. KRAMER: We object to that. It must be shown that conditions are the same here, or it would have no bearing on this case.
The COURT: I will hear it subject to the objection.

A. Conditions are the same in those markets for handling hay as they are here.

By Mr. FARRELL (continuing):

Q. That isn't the question. I asked you whether they do pay anything extra for the reconsigning privilege there?
A. No, sir, they do not.
Q. Where is it they don't pay anything extra?
A. Nashville, Tennessee, Cairo, Illinois, Evansville, Indiana, Memphis, Tennessee, Cincinnati, Ohio, and I believe Louisville, Kentucky; I am not sure.
197 Q. Are there dealers located at those points, that is, dealers in hay in the same way you do, there?
A. Identically the same.
Q. Shipping to the same markets in the southeast?
A. Yes, sir.
Q. In competition with you?
A. Very much competitors, both buy- and selling; they buy in my territory and sell in our territory.
Q. Do these dealers buy in the same markets you do?
A. They buy from the same section that I buy from, and from very largely the same shippers that I buy from.
Q. Do they buy in this section north of East St Louis, where you buy?
A. They do, and the goods move through East St. Louis to the south.
Q. You say that previous to June 1st, 1903, you did not have to pay this 2 cents extra for reconsigning privilege at East St. Louis?
A. No, sir.
Q. Did they have exactly the same tariff scheme at that time?
A. They had exactly the same tariff, but they did not confine themselves to those tariffs as they do now.
Q. Well, if they had this 4 cent tariff why were you not obliged to pay it?
A. Because they were willing to accept it without going through all this procedure, restrictions.
Q. They did accept it?
A. Yes, sir on hundreds of cars. On bills of lading furnished

to them they issued bills of lading on the basis of 2 cents over the Ohio River rate.

Q. How did you find out in the first instance they were going to abandon that former practice of allowing you to ship at 2 cents over the Ohio River rate, and charge you an excess of 4 cents for the reconsigning privilege?

A. The railroads handling that business notified me that they would not accept any of my shipments unless received through Mr. Frink's Association; I could not make any shipments; anything that was handled from the warehouse had to be proposed by this Association.

Q. You mean what roads?

A. All the southern roads; every one of them.

Q. Is there anything further concerning the complaint
198 you have made against the Southern Railway Company you care to say?

A. Yes, sir, I would like to state some further things, if acceptable. I would like to make an explanation showing what advantage the National warehouse is to the Southern, and I would like to make an explanation to show what advantage reconsigned shipments, which they are charging me 4 cents higher than the Ohio River, as against through shipments, if I am permitted.

Mr. KRAMER: I object to that, because we cannot compare two legal rates.

The COURT: I will hear it subject to the objection.

A. The railroads which have in effect the 2 cent rate from East St. Louis over the Ohio River rate for shipments of hay will accept the northern line cars at East St. Louis and pay them a revenue of 20 cents a day on that through car until it reaches its destination; and if a car is in bad order and has to be transferred they are put to the extra expense of furnishing empty cars and transferring the contents of that car to the other car, and the delays besides. Now a reconsigned shipment coming out of the National warehouse, after it is loaded and ready to transport south. As a general rule this equipment can be secured for loading, southern line cars, their own cars, on which they do not have to pay any expense per diem, per day; and as the load will average in a better merchantable condition, and will average at least one ton more to the car than the inferior loaded through car, will give them a better revenue of from $5.00 to $10.00 per car, owing to the destination of the car. In handling the warehouse we find that it has been a great advantage to the railroad, the Southern Railway, as revenue for the movement of traffic through their switching limits at East St. Louis, and affording them many hundreds of empty cars, foreign line cars, which they have used for their miscellaneous freight at their depot, which they would not have had in their possession if it had not been for the warehouse.

Q. You talk about unloading a car by the Southern and changing the load into another car, because the car it came in was damaged. Who pays the expense of the transfer from one car into another car, in that case?

A. The Southern Railway.
Q. Where is that transfer made?
A. In the yards; wherever they may have a transfer track; set aside for that purpose.
199 Q. Have you any knowledge as to the number of cars which were so transferred during the period from June, 1903, to February, 1905?
A. No, I have not; I would not have that knowledge in my possession.

Cross-examination by Mr. KRAMER:

Q. Did you ever have any experience in operating a railroad?
A. I have not had any experience; I have been pretty closely connected with them.
Q. Let us have an understanding. You just answer the questions.
A. Yes, sir.
Q. If you want to explain afterwards I will give you an opportunity. You have never had any experience in operating a railroad?
A. No, sir, not particularly.
Q. When you say that as far as you are concerned, if a car was going to the Union warehouse from some road north, it could be delivered to the Union warehouse by the Wiggins Ferry in one movement?
A. Yes, sir.
Q. The engine could get that car and bring it down and set it to that warehouse——
A. Yes, sir.
Q. So far as you are concerned, you say that when a car has to be moved from the Union warehouse it can be delivered to the Southern Railway in one movement?
A. That is what I said.
Q. You say it can be done?
A. Yes, sir.
Q. You mean that the engine could come up there and get that car and take it down and deliver it to the Southern?
A. Nothing to hinder it.
Q. You think that the yard movements, the business of the yard, could be transacted in that matter?
A. I did not say that.
Q. You just say it is physically possible for the engine to bring that down——
A. I have had it done.
Q. But you don't pretend to say that is the practice here in the railroad yard?
200 A. No, sir, I don't have to; but I have had it done many a time.
Q. I am not questioning but what it might be physically possible to do that. Do you know how many engines it would take at East St. Louis for a railway company to undertake to do its switching in that kind of a manner?
A. I haven't estimated that.

Q. You don't know anything about that?
A. No, sir, not necessary for me to know.
Q. You know that the Wiggings Ferry Company in the transaction of its business is required to move many cars while doing its switching business?
A. They do it at their own convenience.
Q. In the transaction of its business that is the way it is done?
A. Yes, sir.
Q. You do not say but what in the transaction of the business they do make the moves as they have been detailed by these witnesses on the stand? Are you prepared to say they do not make them?
A. I am not prepared to say they do not make them, but it is not necessary to make them.
Q. I am not asking you for your opinion, whether they are necessary or not. You are not prepared to say they do not make them in the transaction of that business?
A. No, I don't keep a record of the cars after they leave my place.
Q. You do not know the moves they make?
A. They may make one.
Q. You are of the opinion they could do it with less movements?
A. I am sure I could if I was running the place.
Q. You think you could run the railroad better than they do?
A. If they make that many moves, I would certainly do it.
Q. You never have tried that?
A. No. I may have the experience yet before I die.
Q. I am not asking you that.
A. I just wanted to——
Q. You don't pretend to say but what when you ship a car of hay from the country, and desire this through movement at the through rate, but what you could avail yourself of that, do you?
A. How was that?
201 Q. I say, you have the privilege of availing yourself of the through rate whenever you want to in shipping hay?
A. And still handle it from here through our houses?
Q. I say, you could avail yourself of these through rates, just as other shippers can?
A. I can bill it from the point of shipment, yes, sir.
Q. When you want to set it at your warehouse and unload, and then reconsign, you are required to pay this reconsignment rate of 28 cents to Atlanta, aren't you?
A. Yes, sir, we are compelled to pay it.
Q. I know, you say you are?
A. Yes, sir.
Q. If you ship hay at the local rate from here you would be compelled to pay 29 cents?
A. If we ship it at the local rate.
Q. The regular local rate of 29 cents would apply?
A. Yes, sir.
Q. Then on your reconsigned hay you have a rate one cent less than the local rate?
A. The reconsigning rate is one cent less than the local rate.

Q. During this period of time that you have been shipping hay the reconsigning rate was 28 cents from East St. Louis?

A. East St. Louis to Atlanta.

Q. You say that prior to the first of June, 1903, you could make these transfers at this warehouse on your bills of lading; the northern bills of lading?

A. We would have this 28 cent rate apply, yes, sir.

Q. They would permit it to go through as a through shipment?

A. They were glad to get it.

Q. I am just asking you what they did do?

A. Yes, sir, they did.

Q. You say the Southern did that?

A. Yes, sir.

Q. From your warehouse?

A. Yes, sir.

Q. Where?

A. The Union. Shipments that moved by way of the Union warehouse.

Q. That would come through from the Wiggins?

A. That would come through from the Southern by the Wiggins.

Q. Well, you got that from the Southern Railway ?

202 A. Took it out from a northern line car and put it in a Southern line car and sent it to the Southern Railway and give them a northern bill of lading.

Q. They would allow you to take a bill of lading—a northern bill of lading?

A. Yes, sir.

Q. And transfer that here. The rate was 28 cents at that time?

A. The tariff rate, received from the Southern Freight Association. Done that way for the last 10 or 12 years, I guess.

Q. It was 28 cents?

A. But they did not require us to come through the Southern Freight Association.

Q. Just answer the question. The rate was 28 cents prior to that time?

A. That reconsignment rate was 28 cents.

Q. But you say that did not apply?

A. No, sir.

Q. But they did commence to apply it on the first day of June?

A. Yes, sir.

Q. And have applied it ever since?

A. Yes, sir.

Q. They have applied it ever since you have had the National warehouse?

A. Oh, yes, been applied ever since then.

Q. What kind of representations did you make with reference to these shipments prior to the first of June, 1903, to the Southern Railway Company to get the 28 cent rate?

A. What kind of representations?

Q. Yes, what would you say about that?

A. We did not do anything except to offer them the northern line bill of lading.

Q. Who did you offer that to?

A. To the Southern agent.

Q. How was that bill of lading made out at that time?

A. The bill of lading was—I don't remember now just exactly.

Q. I mean, was it made out as a through shipment, or was it made out as a local shipment to East St. Louis, that you presented to them?

A. Well, now, some of them were through shipments at
203 that time, and I think some of them were locals that they had corrected.

Q. Where would you have that corrected; by whom?

A. By the northern line.

Q. But you never took a local bill of lading coming into East St. Louis to the Southern Railway Company and had that flat rate of 26 on that, did you?

A. Not where it was billed straight to East St. Louis; we have either had it corrected or billed through.

Q. You always took a bill of lading to the Southern that purported on its face to be a through bill of lading, didn't you?

A. Yes, sir.

Q. And then had them apply the rate?

A. They allowed us to handle it through the warehouse, and applied the rate from East St. Louis.

Q. You don't know of an instance where they did that on a local shipment to East St. Louis. I mean that would come to the Southern as a through shipment, wouldn't it?

A. Yes, sir.

Q. Under the reconsigning arrangement now you may take a bill of lading of a shipment to East St. Louis and have it reconsigned at 27 cents, on that?

A. We can——

Q. Answer the question, and then if you want to make an explanation. Say yes or no and then explain.

A. Put your question again.

Q. I say, you may now, and since the 1st of June, 1903, take a bill of lading of this local shipment to East St. Louis, and have a reconsignment on that at the 28 cent rate?

A. No, sir, no bill of lading goes; you cannot take a bill of lading; you have got to furnish an expense bill.

Q. Well, I mean an expense bill for the shipment to East St. Louis?

A. Yes, sir.

Q. All that is required for this reconsignment is that you furnish evidence by the expense bill that the product has borne a transportation charge on rails coming in here?

A. We are required by the Southern Freight Association——

Q. Cannot you answer the question by saying yes or no, and then explain?

Mr. WHITNEL: He has answered it.
Mr. KRAMER: He may answer yes or no and then explain?

A. Will you let me explain?

204 By Mr. KRAMER, continuing:

Q. Yes, you may explain afterwards.
A. I will say yes.
Q. Now explain.
A. On surrender of the paid expense bill showing a movement of the car to East St. Louis, Mr. Frink, the Chairman of the Southern Freight Association will certify that we are entitled to a rate 4 cents above the Ohio River rate. He certifies that there is so much paid up to East St. Louis, and certifies so much paid between East St. Louis and the Ohio River, and the Ohio River rate added, making the through rate, which is 2 cents per 100 pounds above the tariff on every single car.
Q. Above the tariff? What do you mean by that?
A. From the point of shipment.
Q. You mean it is 2 cents more than the through rate?
A. 2 cents more than the through rate on every single car.
Q. But this applied where you had a local shipment to East St. Louis and then desired to send it on——
A. It is the understanding that the Southern Freight Association was to give us the balance of the rate.
Q. How was that?
A. It has been the understanding that the Southern Freight Association was to give us the balance of the rate.
Q. What do you mean by the Southern Freight Association was to give you the balance of the rate?
A. The balance of the through rate. We have had bills of lading that showed it; from the Southern Railway and the I. C. and the Mobile & Ohio.
Q. When did that understanding prevail?
A. I have furnished a block of them to the Interstate Commerce Commission; the evidence shows it.
Q. Have you any now?
A. I have in my files in St. Louis.
Q. Can you bring one and furnish it to us here?
A. Yes, sir.
Q. Was that by the Southern Railway?
A. Yes, sir. And the Illinois Central and others.
Q. Bring one of the Southern?
A. I will bring it.
Q. That will be a case where a car came in here local and was billed on at 26 cents?
A. No, billed on at 28 cents; stamped "balance of the rate."
205 Q. You can furnish us a bill of lading where they stamp "balance of the rate."
A. Yes, sir.
Q. Who put that stamp on?

A. The Southern Railway.
Q. What kind of a stamp was it?
A. A rubber stamp.
Q. How did it read?
A. "Balance of the rate." It was not the balance of the rate; it was 2 cents per 100 pounds higher.
Q. Bring in one with a stamp of that kind. I mean a bill of lading that has been stamped in that way since June 1st, 1903.
A. I guess I have; but since I brought the complaints they have changed their stamp to make it read "Reconsigning rate" now.
Q. Have you any, I say, that have been issued since then; since June 1st, 1903?
A. I stated I have got quite a number. Our complaint was not filed until May, 1904.
Q. Regardless of how they stamped the bill of lading, nevertheless this rate of 28 cents has been applied to all shipments where you have demonstrated the fact that the freight has borne one transportation charge into East St. Louis?
A. I did not just catch that.
Q. I say, this 28 cents reconsigning rate has been applied in cases where you have demonstrated by a paid expense bill that the freight has borne one transportation charge into East St. Louis. That has been the understanding?
A. Yes, sir.
Q. All you had to do was to demonstrate that fact and you would have the benefit of the reconsigning rate?
A. Yes, sir.
Q. Now, how do you know, Mr. Dye, in each of these instances that these cars that you have mentioned were picked up as you say, by the Wiggins Ferry Company?
A. By seeing them put in on our switch track and checking them up.
Q. How do you know where they get them?
A. By the record of the Wiggins; when they *set* a pickup car to us it is simply carded to the Union. When they get a car from the Southern it is shown by the waybills of the Southern.
206 Q. Do they always have a waybill for a car received from the Southern?
A. From any railroad connection that sends empties to the Union warehouse.
Q. It comes with a waybill?
A. Yes, sir, a waybill is furnished to the Wiggins. They simply card the car up to us when it comes from the Wiggins yard.
Q. Have you got the waybills from which this was compiled?
A. We have our records that show the movement of the car in and out of the warehouse.
Q. How were those records made up, and when?
A. They were made up at the time the shipments moved.
Q. Where are the records kept?
A. Those records are kept at the office; our office in St. Louis.

Q. How does the information reach your office as to whether a car is a pickup car or comes in on a waybill?
A. That reaches our office through the Union warehouse office.
Q. What does the Union send to you?
A. We get their waybills of the cars; the cards of the cars.
Q. Are the cards and the waybills sent over to your St. Louis office?
A. We keep them at the Union warehouse office.
Q. How do they make up the records?
A. The record is made up——
Q. Well, how does the information come to your office from the Union warehouse as to whether these are pickups or on waybills?
A. I am at the Union warehouse every morning at 7 o'clock when the cars are set in there.
Q. You would not swear that you recollect all about these cars now?
A. No, sir, I could not say that.
Q. I asked you how you get the information.
A. Well, I take the information right with me over to the office from the Union warehouse.
Q. You go over and make a record of it?
A. We make a record of it right in our office.
Q. What is the object of keeping that record?
A. The object is to see what we are getting?
207 A. What is the object of keeping a record as to whether a car is a pick up or comes to you on a waybill?
A. What is the object of keeping any record at all?
Q. Just answer the question. Why do you keep that record?
A. Because we want to know what we are getting.
Q. In either case you find the car set on your track?
A. Yes, sir.
Q. Why are you interested in keeping a record of the way it comes, or in knowing whether or not it is a pick up or comes to you on a waybill?
A. To see just what the railroads are giving us.
Q. You know what they are giving you, because the car is there. Why do you keep that record?
A. Why do you keep any record? Keep it for information.
Q. I am asking you the object of keeping that record?
A. For information.
Q. What do you want the information for?
A. What do we want any information for?
Q. What do you want that information for?
A. Want it to see what we get.
Q. You know what you get?
A. If we did not keep the record I would not know.
Q. What is the object of keeping a record of whether or not the car came to you on this card showing it was picked up by the Wiggins, or whether it came to you on a waybill?
A. There is no special object, except that it is done.
Q. No special object in doing it?
A. No special.

Q. Where is your record from which this was compiled?
A. It is in the office.
Q. Will you bring the record over here and let us inspect it?
A. Yes, I can bring the record of our receiving——
Q. Will you do that?
A. Yes.
Q. In what manner would you get a car from the Wiggins Ferry Company when it comes to you as a pickup?
A. In what manner?
Q. Yes?
A. It comes into the switch the same as other cars.
Q. How do you get the Wiggins to switch it in?

208 A. The Wiggins Ferry agent issues instructions to the clerk that checks up the empties coming out of the several connections, and when we want an empty they have their clerk card the car right in to us.

Q. You give your instructions to the Wiggins Ferry Company——
A. That we are wanting so many Southern cars, or we want so many M. & O.'s or I. C.'s.
Q. You do not know when you give this order whether or not they have the cars?
A. Well, we are not running around to the different connections, but the clerks at these different connections has a standing order, and had for years.
Q. You leave a standing order to furnish cars if they have them.
A. I leave a standing order that we want empty cars, and if they have got any southern line cars, any line that will run to the south, they set them in to the Union, when we want any empty cars to load.
Q. You give them standing orders for — many you want in?
A. Yes, sir, from day to day we tell them we want five, or ten——
Q. You don't know whether the Wiggins Ferry Company has the cars on hand?
A. No, sir, they are picked up sometimes in St. Louis and sometimes they are at East St. Louis.
Q. If the Wiggins Ferry Company has any such cars on hand they hold them in their yard for you?
A. When the clerk does the checking of the northern line connections, if there is any Southern cars on L. & N. that we have standing orders in for they have the clerk to card them to us.
Q. You give these orders so that if they have these cars they can hold them for you?
A. They don't hold them. They bring them right in as soon as they can.
Q. You give an order and they hold the cars in their yards and turn them over to you if they can?
A. Oh, yes.
Q. Instead of returning them to the southern line?
A. Certainly.
Q. When you give an order of that kind, instead of returning the car to the Southern they hold it for you?
A. Yes, sir.

Q. That is a fact?

209 A. Yes, sir.

Q. Now do you keep a record of the cars that you unload and then reload into the same car?

A. Yes, sir.

Q. You have a record of that kind, kept right along at the time these transactions took place?

A. Yes, sir.

Q. Can you tell us, from that record, what kind of a car it was that you loaded out of and into?

A. Tell what kind of a car it was, yes, sir; it don't show—shows the initials and the car number.

Q. That is all I care for.

A. We don't take the dimensions of the car, nor the description of it.

Q. This same record shows whether they are carded or waybilled in to you, and also the unloading and reloading of the same car?

A. This same record would have to be checked back with the cards or waybills, as the case may be.

Q. Have you checked it back to show this?

A. We had them checked back, yes, sir.

Q. You had this checked back? (Referring to paper in hand.)

A. Yes, sir.

Redirect examination by Mr. FARRELL:

Q. Do I understand that the shipments of hay mentioned in this list (the list I am now showing the witness will be Exhibit Number 1 to Mr. Dye's testimony) are the same shipments of hay as were included in the list of shipments on which you claimed reclamations before the Interstate Commerce Commission in this case?

A. Yes, sir.

The statement referred to by counsel, and identified by the witness, is made a part of the record in this case, and marked "Exhibit No. 1 to Mr. Dye's testimony", and accompanies this transcript under separate cover.

Recross-examination by Mr. KRAMER:

Q. I want to ask you one question. In speaking of the advantage to the railroad of reconsigned shipments over through ship-

210 ments, you stated it enabled them to use their own cars and not have to pay this 20 cents per diem on cars from connecting lines. Don't you know that the railroad companies would be glad to get cars at 20 cents per day?

A. I don't know that. I don't know that they were anxious to get cars at 20 cents per day.

Q. You don't know whether that is a burden or an advantage, do you?

A. I should think it would be a disadvantage if they had to pay out money, any amount.

Q. Do you know whether a car is worth that or worth more?

A. I don't consider it worth any more.

Q. Do you know anything about it?
A. I don't know much about it.
Q. Do you know anything at all?
A. Yes, sir, I know something about it.
Q. Can you furnish the court any information whether or nor that is an advantage or a disadvantage to the railroad company?
A. It is an advantage if you don't have to pay out anything for a car.
Q. If you don't have to pay out anything for a car?
A. Yes, sir.
Q. You think just simply because they are required to pay that 20 cents per day it is a burden?
A. Anything that you are required, if you have to pay it, is certainly a burden.
Q. They could use the car, though.
A. If you had plenty of Southern cars standing idle——
Q. I am not going into that.
A. ——and were not using them, you would consider 20 cents a day on a foreign car a burden, wouldn't you?
Mr. KRAMER: That is not the question.

Re-examination by Mr. FARRELL:

Q. Speaking about that 20 cents per day. Have you some information with reference to the cost of box cars?
A. Yes, sir, I have.
Q. State what that is.
A. I have the information, or an offer, rather, showing that a standard 36 foot wooden box car, carrying 60,000 pounds, standard new 36 foot frame box car, with air brake equipment, well built, F. O. B. cars, for $765. (Witness refers to letter.)
211 Q. What are you reading from?
A. From the American Car & Foundry Company's offer.
Q. Who is that letter signed by?
A. Signed by Mr. E. S. Marshall.
Q. What is the date?
A. Dated April 26th, 1906.
Q. You have given the length as 36 foot. Are you able to give the other dimensions?
A. Oh, the standard specifications, with drawings and plans.
Q. Are you able to give the width and height of that car you call a Standard?
A. Yes, sir, I am able to give it. The length from end of sills 36 feet, 7⅝ inches; length inside, 36 feet; length over roof 37¾ feet; length over running boards 37 feet 7⅝ inches; length over end sheeting 36 feet 9¼ inches; width from side sills 9 feet 5 inches; width inside —— —— width over side sheeting 2 feet 2¼ inches; width over eaves 9 feet 6¾ inches; height, sill to plate, 7 feet 10¾ inches; height floor to car line 8 feet; height rail to center of coupling 2 feet 10½ inches.
Q. I think that is all we care for. How does that in a general

way—how does the value of that car compare with the value of — used by you from June 1st, 1903, to February 1st, 1905?

A. I should judge the value of a standard box car is about $200.00 more than it was in 1903.

Mr. KRAMER: I object to Mr. Dye speaking to that subject unless he knows. He is not qualified to speak as an expert.

By Mr. FARRELL, continuing:

Q. Are you acquainted with the kind of car you are now describing?

A. Yes, sir.

Q. And are you also acquainted in a general way with the average run of cars furnished you for the shipment of hay?

A. Yes, sir.

Q. How do the two compare?

A. The new car is a great deal better car, more expensive, than were the cars then.

Q. What do you mean in money? What does that represent in money?

A. In the year 1903 the American Car & Foundry Company agreed to build some cars, new cars, for us, for I think, $495; standard 36 foot box cars.

Q. Do you always get a 36 foot car to load with hay?

212 A. Not always; sometimes 34; sometimes 33, sometimes more.

Q. Something was said about you getting these bills of lading on cars and then you would take them to the Southern Railway and other railways leading to the south, to have them apply this 2 cent rate. Do you know whether or not when you took these bills of lading down there and asked to have these cars of hay billed to points in the southeast, the Southern knew that these cars had been reloaded at the Union warehouse?

A. Yes, sir.

Q. Did they?

A. They understood it, because we transferred them into other cars; they did not make any objection, because they didn't think it necessary to make any objection. All they wanted to know, if we handled the cars through and give them——

Q. They knew they were loaded at the Union warehouse?

A. Oh, yes.

Q. Also this 29 cent rate——

A. Never used that I know of.

Q. Is any hay ever hauled into East St. Louis by wagons?

A. Only for local consumption.

Q. Well, to what extent?

A. That I could not say.

Q. Very little or very much?

A. Very little.

Re-examination by Mr. KRAMER:

Q. How did you come to receive this letter with reference to the cost of these cars?

A. Well, I have been figuring with that Company for box cars from time to time.

Q. These cars you were figuring on were cars specially built for the hauling of hay?

A. No, sir, regular N. C. B. standard cars.

Q. The same as we buy for general business?

A. The same as you buy for general business or otherwise.

Q. Are they the same as those used by the Southern Railway Company?

A. I think they are the same; the same car that is used by the Southern; frequently used for hay.

213 Q. Do you know anything about that?

A. I have never made any careful inspection.

Q. I suppose there is a difference in the construction, the cost of box cars, like everything else?

A. I should judge so, but not very much, for a 36 foot standard box car.

Q. They do not all cost the same, do they?

A. I should not judge the different sizes would cost the same.

Q. Some are better than others?

A. Yes, sir.

Q. You have never had any experience yourself in constructing box cars?

A. No, sir.

Q. Outside of your experience in attempting to purchase these you have never had any experience in the business at all, have you?

A. Not as to purchasing them. We have had prices on them, and so on.

Q. You don't know what box cars cost the Southern Railway Company, do you?

A. Not only from the testimony of Mr. Cooper; they may have to pay two or three thousand for them.

Testimony of William J. Edwards.

WILLIAM J. EDWARDS, called for the petitioner, being first duly sworn, testified as follows:

Direct examination by Mr. FARRELL:

Q. Please give your name?

A. William J. Edwards.

Q. What is your occupation?

A. Commercial agent of the Chattanooga & St. Louis Railroad, and chief clerk for the general passenger agent.

Q. Where are you located?

A. In St. Louis.

Q. Are you acquainted with the situation that is, referring to shipments of hay through Nashville, and from Nashville?

A. Yes, sir, in a measure.

Q. What is the fact about reconsignments down there? Is there any reloading of hay done?

Mr. KRAMER: We object to that.

A. Reconsigning is permitted.

214 Q. Is there any extra charges made over the charge for through shipments; anything that comes in?

A. No, sir, there is not.

Cross-examination by Mr. KRAMER:

Q. Does the Southern Railway run into Nashville?

A. I believe it does, yes, sir.

Q. Do they have any line running from here to Nashville?

A. No, sir, not direct.

Q. During the period of time covered by this investigation, June 1st, 1903, to February 1st, 1905, did it have any line into Nashville?

A. Not to my knowledge.

Q. Do you know what the conditions are with reference to the reconsigning of hay, as compared with the conditions in East St. Louis?

A. I know that reconsigning is permitted at Nashville.

Q. That is all you do know? You do not know the service required as compared with the service here?

A. Relatively, no, sir.

By Mr. FARRELL:

Q. How long has that been the condition, no extra charge for reconsigning?

A. Well, to my knowledge fifteen years.

Cross-examination by Mr. NORTHRUP:

Q. What is the rate from, say from Cairo to Atlanta—what was it at the time of this complaint?

A. 24 cents.

Q. Now a man at Nashville, reconsigning hay there, would he pay 24 cents from the river, by reshipment, reconsigning at Nashville to Atlanta?

A. Yes, sir, he would.

Q. In other words, he would pay the full local rate?

A. He would pay the full Ohio river rate.

Q. Now a man reconsigning at East St. Louis would pay less. What is the local? Isn't the local from East St. Louis to Atlanta 29 cents; wasn't it at the time?

A. I understand that is the published rate.

Q. A man could reconsigned at East St. Louis for 28 cents, couldn't he?

A. I understand so, yes, sir.

215 Q. Less than the full local rate?

A. Yes, sir.

By Mr. FARRELL:

Q. Do the rates break at Nashville, in such a way that the rates to and from Nashville are the same as the through rate from the point of origin to final destination?

A. I understand that hay is billed to Nashville at the Ohio river rate and is reconsigned to any points in the southeast on the basis of the through rate from the Ohio river.

By Mr. NORTHRUP:

Q. That is the same as the local, though, isn't it?

A. The same.

Testimony of W. B. Harrison.

W. B. HARRISON, called for the petitioner, being first duly sworn, testified as follows:

Direct examination by Mr. FARRELL:

Q. Please state your name?

A. W. B. Harrison.

Q. Where do you reside?

A. St. Louis.

Q. What is your business?

A. Grain business.

Q. Do you deal in hay at all?

A. Not now; until two or three years ago I was dealing very largely in hay.

Q. Were you a hay dealer at East St. Louis between June 1st, 1903, and February 1st, 1905?

A. No, I have not handled any hay since about 1904, and not very much then; I handled some hay in 1903; had a warehouse then in East St. Louis.

Q. Are you acquainted with this question of reconsigning, that is being considered here?

A. Oh, yes.

Q. Have you knowledge of whether or not any extra charge is made for reconsigning at other points than East St. Louis south of here, such as Ohio river points, and Nashville and Memphis?

Mr. KRAMER: I suppose we may have it understood that we are objecting to this.

The COURT: I understand you object to that.

216 By Mr. FARRELL, continuing:

Q. Is there any charge for reconsigning, at these points?

A. No, sir, none that I know of.

Q. How does it affect dealers in hay at East St. Louis?

A. It is a handicap for them in competing, especially with the Nashville gateway, of 2 cents per 100 pounds.

Q. Where do they compete?

A. In southeast and Carolina territory.

Q. Do they also buy in the same markets north of East St. Louis?
A. Yes, sir.

Cross-examination waived.

Testimony of E. L. Bartlett.

E. L. BARTLETT, called for the petitioner, being first duly sworn, testified as follows:

Direct examination by Mr. FARRELL:

Q. What is your full name?
A. E. L. Bartlett.
Q. Where do you reside?
A. St. Louis.
Q. What is your business?
A. Grain and hay business.
Q. Are you operating in East St. Louis?
A. I have a warehouse in East St. Louis.
Q. You operate a warehouse here?
A. Yes, sir.
Q. Are you acquainted with this question of reconsigning being considered here?
A. Yes, sir; I am fairly well acquainted with it.
Q. Do you know whether or not any extra charge is made for the reconsigning privilege at Ohio River points and Nashville and Memphis?
A. Well, there is 2 cents per 100 pounds; 2 cents.
Q. At these points? At Ohio river points?
A. No, there is no extra charge there.
Q. How does it affect dealers at East St. Louis?
A. We are at a disadvantage; we are laboring here under a disadvantage of about 2 cents per 100 pounds.
Q. On that account?
A. On that account, yes, sir. We are competing with them in southeastern territory and the Carolinas.
217 Q. Also competing with them in buying in the territory north of East St. Louis?
A. Yes, sir, there is where we receive most of our hay.

Cross-examination by Mr. KRAMER:

Q. Are you acquainted with the conditions which prevail at Cairo, Evansville, Nashville and these other points, with reference to the service required in reconsigning there, as compared with East St. Louis; the cost of handling the stuff at these points?
A. I understood——
Q. I am just asking you what you know about that.
A. That is what I understand. I know that the service is about the same.
Q. How do you know that?
A. From my experience, and what people inform me. I have not done business at these places.

Q. You do not know what is done at Cairo?
A. I never re-consigned hay at Cairo.
Q. You don't know anything about the service required at Evansville, do you?
A. I think I have reconsigned some hay from Evansville.
Q. Do you know anything at all about the service performed by the railroad company in re-consigned shipments at East St. Louis?
A. Just about the same service. I have re-consigned hay from Evansville.
Q. Have you been there and seen the work performed by the railroad company in doing that?
A. No, I have not been down there.
Q. You do not know anything about that?
A. Well, I have an idea about it.
Q. How did you get your idea?
A. Well, from my representatives down there.
Q. I don't want what anybody told you. What do you know about it?
A. I do not know only what I have heard from my representatives.
Q. I mean of your own personal knowledge. You do not know of your own personal knowledge, do you?
A. Well, that is my experience; I do not know——
Q. Just answer the question.
A. I know something about it, yes, sir.
218 Q. You do not know anything about the service performed by the railroad company at Evansville in re-consigning a car, of your own personal knowledge, do you?
A. No, I do not; I have not been down there on the ground.

Mr. WHITNEL: I want to read the testimony of J. R. Lucas before the Interstate Commerce Commission at St. Louis, Missouri, on October 14th, 1904.
The COURT: We will consider that in, subject to the objection.
Mr. KRAMER: I do not think a great deal of this has any reference to the Southern. However, it may be considered in subject to objection.
The said testimony, offered in evidence by the petitioner, is in words and figures as follows, to-wit:

Testimony of J. R. Lucas.

J. R. LUCAS, called as a witness on behalf of the complainant, having been duly sworn, testified as follows:

Mr. DYE: Mr. Lucas, you are a shipper of hay out of East St. Louis, are you not?
Mr. LUCAS: Yes, sir.
Mr. DYE: Have you knowledge of the freight rates?
Mr. LUCAS: Yes, sir.
Mr. DYE: Have you knowledge of the southbound rates com-

plained of here—assessing 4 cents a hundred on shipments of hay from East St. Louis to the Ohio River?

Mr. LUCAS: Yes, sir.

Mr. DYE: You have knowledge of these same railroads assessing a proportional rate of 2 cents a hundred on shipments between St. Louis and the Ohio River, destined for the southeast, have you not?

Mr. LUCAS: Yes, sir.

Mr. DYE: And you have also from actual shipments made by you experienced both rates?

Mr. LUCAS: The majority of our stuff we buy in the country we handle at our warehouse in East St. Louis, and the railroad assesses us 4 cents a hundred to the Ohio River on all shipments coming from country points and destined to the southeast. We can, or any shipper in the country, by using the through published rate, can make the same shipment for 2 cents to the Ohio River when destined to southeastern points.

219 Mr. DYE: You heard it stated here at the beginning that the railroads assessed this 2 cents a hundred for the trouble and expense they were put to in re-consigning or re-handling the shipments at East St. Louis. I would like to know if on all the shipments you made to the southeast where the reconsigning rate has been applied, the railroads have been to any expense whatever in the re-handling?

Mr. LUCAS: None whatever. It costs them no more to deliver that to my warehouse. We furnish the labor and pay the expense. If they transfer to their own yards, they are to the expense of transferring; not only that, but it costs more. Most of the cars coming in are larger than the southern cars. They have a lot they cannot take care of. It has to *to* go to their warehouse and they must take care of it. There is an extra movement of cars in the yard, and we can handle the stuff at less expense than they can handle it in their yards.

Mr. DYE: I will ask you, do you consider the freight rates furnished by the Southern Freight Association on a re-consigning basis satisfactory to the shippers out of St. Louis and whether or not you consider it proper—whether or not, it is a great annoyance?

Com'r CLEMENTS: Tell how it does hurt you. if it does hurt you?

Mr. DYE: How much disadvantage it puts you to, to make out a transcript of expense bills, extra time of clerks, etc.

Mr. LUCAS: Prior to their assessing 2 cents, most of my stuff I had billed through and they gave me the privilege of handling at my warehouse and accepting stuff on a proportional rate after I handled it. Then, they allowed me to use the proportional rate the same as any country shipper. I cannot remember the date they cut that off. They then made everything through the Southern Freight Association and charged us 4 cents to the river instead of 2 when we furnished them the same identical hay that we did before. It did not make any difference whether we bought it and billed it through to Nashville or bought it on the local market and billed it to southeastern markets.

Com'r CLEMENTS: Is the practice just the same in the business

here in East St. Louis now that it was before that extra 2 cents was charged?

Mr. LUCAS: Exactly the same.

Com'r CLEMENTS: About when was that change made?

220 Mr. LUCAS: Well, nearly 2 years ago— about 18 months ago. I do not know exactly.

Com'r CLEMENTS: On these shipments billed through by a local man at these outlying points where the 2 cents applies, does his car stop here for the hay to be re-handled like yours?

Mr. LUCAS: Nine times out of ten the inbound roads compel the southern roads to transfer their cars, and they do when they have the equipment. Of course, I cannot say; sometimes they transfer and sometimes they run the cars through.

Mr. DYE: I would like to ask Mr. Lucas whether in his opinion he considers that the shipper at these small stations that they give the benefit of that 2 cent rate to, is entitled to any more privileges than we are at this end, half way down the line, or a quarter way down the line?

Com'r CLEMENTS: It would be better for him to state the reasons why he thinks they are not.

Mr. LUCAS: Well, we are in business here and maintain warehouses for the handling of this stuff, and it is putting a burden on us that we should not stand. Instead of assessing us a higher rate, they ought to give us equal rates or we will be forced out of business. We cannot do business and compete with people in the country that have a less rate than we have.

Com'r CLEMENTS: Your contention is that the service rendered is about the same in each case?

Mr. LUCAS: Very much the same.

Com'r CLEMENTS: And that is a hurtful discrimination against the dealers here who have to pay 2 cents more than the others. Is that what you mean?

Mr. LUCAS: Yes, sir; and I will say further in the St. Louis Hay & Grain Company case that I was connected with them for a year and I know their method of handling the stuff. Their stuff they transfer to the southern railway's cars of the outgoing line before it reaches their rails, so that the southern railway cannot make the contention that it costs more to handle a car from their warehouse than a through car. The Hay & Grain Company order a car out over their line. The Hay & Grain Company load it and they do not have to contend with the transfer of that car in their yard.

Mr. DYE: They do not perform any service on the shipment until it is ready to go south, do they?

Mr. LUCAS: No, sir.

Com'r CLEMENTS: Anything further?

221 Mr. DYE: No, sir.

Com'r CLEMENTS: This contention is in regard to hay and not grain?

Mr. DYE: Yes, sir. I wish to state in reference to grain that in the tariffs of the southbound roads, it takes Class D; that they have taken grain and made a re-consigning rate equal to the proportional rate, taken it out of the same class. They allow it to be stopped at

East St. Louis, unloaded in elevators and shipped as the shippers see fit and in addition to that they pay inbound switching on this grain out of the revenue from East St. Louis to the Ohio River. In addition to that they pay ¾ of a cent a hundred for the elevation of the grain, whereas on a car of hay they charge us 4 cents a hundred between East St. Louis and the river, making an average of eight or nine dollars, one dollar and a half, leaving $6.50 or $7.50 net revenue between East St. Louis and the river.

Com'r CLEMENTS: Is there no difference in respect to grain shipped on a through shipment by a local man at an outlying point and that shipped by a dealer at East St. Louis who has shipped it in here and elevates it?

A. None whatever.

Com'r CLEMENTS: The rate is the same?

Mr. DYE: The rate is the same. The proportional rate is the same as the re-consigning rate.

Com'r CLEMENTS: Has that always been so?

Mr. DYE: For the last 18 months.

Com'r CLEMENTS: How was it before?

Mr. DYE: They used to, before that, charge a higher re-consigning rate on grain.

Com'r CLEMENTS: Like they do on hay now?

Mr. DYE: Yes, sir. I would like to state that I find the rate to Memphis, Tenn., on hay, re-consigned, is 10 cents a hundred from East St. Louis. I find that the railroad companies are handling that business from all this territory we are arguing about, and their proportional rate is 10 cents a hundred, identically the same.

Com'r CLEMENTS: All these claims you put in refer to hay shipments exclusively, do they not?

Mr. DYE: Yes, sir.

Com'r CLEMENTS: Mr. Baxter, do you desire to ask any questions?

Mr. BAXTER: I do not care to ask either of them any questions.

222 Com'r CLEMENTS: Mr. Dye, will you call some other witness?

Mr. DYE: I will call Mr. Deibel.

Mr. WHITNEY: We also desire to read in evidence the testimony of Mr. J. R. Lucas, on being re-called, at the same place and date.

The said testimony is in words and figures as follows, to-wit:

J. R. LUCAS recalled.

Mr. DYE: Mr. Lucas, I wish you would state to the Commission whether or not you consider that the railroad companies are put to more expense in receiving our cars from connecting lines on the Wiggins Ferry track and putting them into the trains, when they have instructions forwarded in advance of the cars, than on the through cars that they receive from like connections or the same connections?

Mr. LUCAS: I do not know that I am capable of answering that.

Mr. DYE: You know the interchange of business?

Mr. LUCAS: I know as much about it as anyone outside of the L. & N. people. Of course, they ought to know. I am in the yards every morning at 7 o'clock. I am in their yard, probably, an hour or two a day—all over the yard, looking up my own cars. My warehouse is in the yard. Of course, I see a great deal of this movement. How long it takes to move the cars I cannot say. I have seen cars setting in their yard sometimes a week at a time waiting for their empties to be transferred. Mr. Compton made the statement that the cars all went through, but I have seen them held for empties sometimes for a week.

Mr. DYE: That is the through cars?

Mr. LUCAS: Yes, sir.

Mr. COMPTON: I do not think I stated that the through business invariably went through in through cars.

Com'r CLEMENTS: No, I think you said that as a general rule that was the way. It has been said here that these people that ship from the country points do not have to maintain a warehouse here, that they get a lower rate and are at no expense. Mr. Baxter's questions seem to indicate that they have a right to charge for the value
223 of the service. Taking the value of the service where it allows the hay to be brought here and blended and mixed so it will suit the market better, you have an advantage in that, Mr. Dye. It is more valuable to you. Of course, when you get that advantage, you do it at the expense of maintaining your warehouse. The man that ships from the country is under a disadvantage if he cannot do that, and you are under the disadvantage that you have to maintain a warehouse in order to do that. It seems to me that the difference in cost to the railroad in performing this service one way or the other is the most vital thing in this case. If there is a substantial difference that enables you to do business that way and it costs the railroads more to handle it that way, in all good conscience if the rates were otherwise fair they ought to be allowed to charge for it. On the other hand, if it costs the same substantially, the fact that it puts you in better position, I do not know that that is any business of theirs.

Mr. DYE: The railroad companies do not put us in condition to do it better.

Com'r CLEMENTS: They contend that they do, by giving the opportunity of stopping it here.

Mr. DYE: They do not give us the opportunity.

Com'r CLEMENTS: You would pay the local in here and the local out?

Mr. DYE: It would be better. The market would be steadier and the business much more satisfactory.

Com'r CLEMENTS: You mean that it would be better with the local rate in and the local rate out?

Mr. DYE: Yes, sir.

Com'r CLEMENTS: What would be the local out?

Mr. DYE: 35 cents, about, as against 32 cents from the Mattoon district they speak of. If there is an extra cost, they have not shown it to my satisfaction. I do not believe they have a right to apply different rates on the same commodity for the same haul.

Mr. BAXTER: Our contention, your Honor, seems to be misunderstood, one point of it. Our contention is that the difference is justified, not only in the difference in cost to the carrier rendering the service, but also the difference in value to the shipper—that we have a right to consider both.

Com'r CLEMENTS: I so understood it.

Mr. DYE: Have you the right to consider the value of our goods?

224 Mr. BAXTER: I did not want to argue it, but simply wanted to get that on the record.

Com'r CLEMENTS: The real and vital issue involved here is still in dispute. You do not agree about it.

Mr. BAXTER: And we cannot possibly agree about it.

Mr. DYE: Mr. Compton, do you as a practice charge the grain men that you haul their corn, oats and wheat south figure in their expense of delivering cars to the different elevators? Have you made an estimate of what it costs you? You did not consider it when you reduced the re-consigning rate down to the proportional?

Mr. COMPTON: In answer to the first interrogatory, I stated that the expense to the carrier in the reconsignment of hay and grain was substanttially the same.

Mr. DYE: They get the benefit of re-consigning, and you admit the expense is identically the same?

Mr. COMPTON: Yes, sir, but I underttook to justify that in my answer.

Com'r CLEMENTS: Mr. Dye, if you can furnish us any data for three months, or six months, that is reliable, showing the expense in one case compared with the other, we would like to have it. It is purely a question of fact.

Mr. DYE: I will ask Mr. Compton to furnish me the car numbers that he made that average on and I will complete it.

Mr. COMPTON: I have no objection to furnishing that.

Mr. DYE: I can get the average.

Com'r CLEMENTS: You need not take the same period. Take any period you desire and make up any statement that you think throws any light on the subject and let us have it as part of your testimony.

Mr. DYE: All right.

Com'r CLEMENTS: When these additional statements are furnished and sent in you will be furnished a copy of the testimony and if you want to argue the case orally you may do so, or you may make a written argument.

Mr. BAXTER: In view of the suggestion of your Honor, I have been talking with the traffic men. We want to bring in the men that actually moved these cars, the yard masters and so on, so there will be no controversy as to what movements are made. We would like to take their depositions.

Com'r CLEMENTS: You can make some agreement as to that.

Mr. BAXTER: We want to take the men that actually move.

225 Mr. WHITNEL: We also desire to read in evidence the testimony of Mr. C. J. Snell before the Interstate Commerce Commission, at St. Louis, Missouri, on February 20th, 1905.

The said testimony, being pages 31 to 40, inclusive, of transcript of testitmony taken on that date, is in words and figures as follows:

Testimony of C. J. Snell.

C. J. SNELL, called as a witness on behalf of the complainant, having been duly sworn, testified as follows:

Mr. DYE: Your name is Mr. Snell?

Mr. SNELL: C. J. Snell.

Mr. DYE: What is your occupation?

Mr. SNELL: Local freight agent of the East St. Louis Connecting Railway and the Wiggins Ferry Company, East St. Louis.

Mr. DYE: How many years' experience have you had with the terminals at East St. Louis?

Mr. SNELL: About 11 years.

Mr. DYE: You are acquainted with the movements of a car over your lines, between the Louisville & Nashville, the Mobile & Ohio, the Illinois Central and the Southern Railway, and all other lines coming into St. Louis and East St. Louis, are you not?

Mr. SNELL: Yes, sir.

Mr. DYE: State to the Commission the treatment that you give and the service you perform on a through car of hay coming from the Wabash Railroad, or any other connection billed through to Nashville, Tennessee, or other southeastern points, when car is put on connection by the incoming road, and the time consumed on an average, in making the delivery to the southbound line.

Mr. SNELL: Well, after a car is placed on the short receiving track it is taken from there—it depends entirely on what part of the levee it is received. In other words, if it was received from the Wabash railroad the car would be taken to our north yard and there classified or switched, and put in line for whichever line it was destined to. It would then move from our north yard to what we call the garden yard, or the south end, where it would be placed in line for the proper destination; in other words, the line billed to.

Mr. DYE: What time is generally consumed on the aver-
226 age?

Mr. SNELL: You could not very well figure that. Of course, I would say that the average time for handling a car under normal conditions would be about 6 or 8 hours.

Mr. DYE: Do you make deliveries after receipt of these cars as a rule in 6 or 8 hours?

Mr. SNELL: As I say, under normal conditions, yes, sir. At the present time we could not make that kind of a delivery.

Mr. DYE: When you take a car of hay from the Wabash connection, your receiving track switches it to the North Yard, and then afterwards it would be taken to your South Yard and then delivery is made to the line over which the shipment is to move. Does that not consume more than 6 or 8 hours, as an average?

Mr. SNELL: I would not consider it does, as I said awhile ago, under normal conditions. I think as a general proposition, an average or about 8 hours.

Com'r PROUTY: How much do you charge for that service?

Mr. SNELL: At the present time two dollars per car.

Mr. DYE: State to the Commission your treatment and service on a car of hay coming out of the Union Warehouse on the same morning, the same day that the switching is made during the day, at our warehouse about 12 o'clock, which is customary, and destined to these same roads for Nashville, Tennessee, or other southeastern points; whether or not this car is delivered to these connections along with the through cars in the afternoon when you make deliveries to these roads?

Mr. SNELL: Well, sometimes the car switched from the Union Warehouse is put into the connection direct, and at other times it is switched into the same garden Yard, and I figure it will take the same average time to get it into the connection; in other words, 8 hours under normal conditions.

Mr. DYE: When you switch it direct, it goes quicker?

Mr. SNELL: Yes, sir.

Com'r PROUTY: What do you charge for that service?

Mr. SNELL: It will average about the same price; the rate is a half a cent a hundred.

Com'r PROUTY: Suppose that car comes in over the Wabash Railroad how do you get it to the Union Warehouse; how does it get to the Union Warehouse?

Mr. DYE: That car doesn't come in——

Com'r PROUTY: Suppose a car did come in?

Mr. SNELL: It would be switched the same as the other
227 car; that is, from the Wabash connection to the upper yard, where it would be separated and put on the track, together with the freight for the point of the yard where the Union Warehouse is located.

Com'r PROUTY: How much do you charge for that service?

Mr. SNELL: Two dollars per car, it will average. The rate to the warehouse is a half a cent a hundred, minimum two dollars.

Mr. DYE: Do you consider the treatment and service at your terminals just the same as on a through car of hay as a car coming from the Union Warehouse going south?

Mr. SNELL: No, I would consider that the car going into the Union Warehouse——

Mr. DYE: Coming out?

Mr. SNELL: Oh, well, the service is, of course, about the same.

Mr. DYE: It is a different movement going in? The expenses are the same for handling?

Mr. SNELL: I would not like to say that, because you cannot very well figure the expense.

Com'r PROUTY: Well, he says his charge is substantially the same.

Mr. DYE: Yes, substantially the same. Do you know from your own knowledge whether most of the shipments going out of the Union Warehouse to these southern lines complained of have been re-loaded into foreign equipment and sent on south that come in under loads?

Mr. SNELL: I do not quite catch that.

Com'r PROUTY: You mean is the contents of the car transferred when it goes directly through?

Mr. DYE: For instance, I have incoming cars under load to the warehouse. Mr. Snell frequently grants me the privilege of re-loading those cars to southbound roads, and in that instance there is no furnishing of empties by the southbound roads, or any service whatever performed in furnishing me empty cars.

Com'r PROUTY: You mean you re-load the car that comes in?

Mr. DYE: Yes, sir.

Com'r PROUTY: You take one load out of it and put another load into it?

Mr. DYE: Yes, sir.

228 Com'r PROUTY: That would be so if you had the hay ready to load?

Mr. SNELL: We often allow Mr. Dye to load the cars. We generally furnish a foreign car when we cannot give him one of our own.

Com'r PROUTY: In that case you would charge for switching the car in and out?

Mr. SNELL: Yes, sir.

Mr. DYE: The switching doesn't cut any figure. Do you have any requests from either the Illinois Central, the Louisville & Nashville, or the Southern Railway not to give the Union Warehouse any empty cars for the loading of hay when there was a great shortage and they wanted all cars that were fit for grain to be furnished for grain?

Mr. SNELL: No, I cannot say that I have ever had any instructions of that kind.

Com'r PROUTY: Do you complain in this case, Mr. Dye, of any discrimination against you as a shipper of hay in favor of grain?

Mr. DYE: Most certainly.

Com'r PROUTY: Do you raise that point in the complaint, do you remember?

Mr. DYE: I believe I have several times. It is in the same class—grain and hay are in the same class in my complaint. I would like to ask you, Mr. Snell, if you made up that statement of cars furnished me for three months that went to the Louisville & Nashville road?

Mr. SNELL: Yes, sir, I made up that statement.

Mr. DYE: Showing the time that the cars were placed at my warehouse, the time they were released, and the time they were given to the southbound road, the Louisville & Nashville?

Mr. SNELL: Yes, sir.

Com'r PROUTY: That statement is correct, Mr. Snell, is it?

Mr. SNELL: It is, to the best of my knowledge, yes, sir.

Mr. DYE: I wish to offer this statement, in order to offset Mr. Compton's testimony, and that of all others of the railroad witnesses, stating that the delay in furnishing me cars and getting them back under load was four days. The average time that we have consumed in loading these cars at our warehouse is not exceeding 8 hours.

Com'r PROUTY: That is after the car is set in?

Mr. DYE: After the car is furnished by the railroad. All of these railroads are interested in the terminals and are a party to
229 these terminals. The delay that they complain of is entirely their own fault, and does not lie with us.

That is all, Mr. Snell.

(The statement above referred to is hereto annexed and marked "Exhibit No. 6.")

Com'r PROUTY: Do most of the lines which enter East St. Louis from the north or west connect directly with the lines leading out, like the Louisville & Nashville, or the Illinois Central, or do they make a connection through your lines in most cases?

Mr. SNELL: Not necessarily through our lines. There are several switching lines over there that they can connect with.

Com'r PROUTY: As a rule some switching charge is made in completing the connection between the Southern Railroads and the Northern Railroads?

Mr. SNELL: Yes, sir.

Com'r PROUTY: And that is about two dollars a car?

Mr. SNELL: At the present time, yes, sir.

Com'r PROUTY: Judge Baxter, have you any questions that you desire to ask this witness?

Mr. BAXTER: No, sir.

Witness excused.

Here the petitioner rested its case, in rebuttal.

Mr. KRAMER: I want to read in evidence, on behalf of the defendant, the testimony of Mr. H. B. Spencer, before Commissioner Clements of the Interstate Commerce Commission, at St. Louis, Missouri, on October 14th, 1904, as to the cost of these movements.

The COURT: It may be considered in, subject to objection.

The said testimony, referred to above, is in words and figures as follows:

Testimony of H. B. Spencer.

H. B. SPENCER, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Mr. BAXTER: Mr. Spencer, with which one of the defendant companies are you connected?

Mr. SPENCER: The Southern Railroad Company.

Mr. BAXTER: Has it a line east of the river?

Mr. SPENCER: It has a line east of the Mississippi River via Louisville.

Mr. BAXTER: It runs from St. Louis to Louisville?

230 Mr. SPENCER: Yes, sir; and thence to the southeast.

Mr. BAXTER: To what department of that company do you belong?

Mr. SPENCER: My title is General Manager of the St. Louis-Louisville Lines. I am traffic and operating officer.

Mr. BAXTER: You have had experience in the traffic department and the operating department?

Mr. SPENCER: I have.

Mr. BAXTER: Take the case of a car of hay brought into East St. Louis under a through rate and through bill of lading, and take another car loaded with hay that comes into East St. Louis and is there switched to a warehouse and is afterwards sent on from East St. Louis to Atlanta; what is the difference in the cost of service rendered by the railroad company in handling the two cars?

Mr. SPENCER: Before answering that question in detail, I will say that the Southern Railway at East St. Louis connects with all lines, so there is no belt line between us and any connection. A through shipment is delivered by the connecting carrier to our rails direct and moves out on our trains. The cost we estimate for the actual movement is about $1.80; that is, the movement from the connection to our train.

Com'r CLEMENTS: It averages what?

Mr. SPENCER: About $1.80. That is a car going through,—from the time we get it from a connection until it is in our train. It requires approximately one day to make the transaction from a connection to our train. The earning value of the car varies on the Southern Railway from one dollar to four dollars per day. A fair average of net revenue would be $1.50. The total cost of the through movement to the Southern Railway is $3.30. Supposing the shipment is destined to a warehouse located on the Southern Railway, we receive the car from a connection and switch it to the warehouse. It is unloaded. The empty car is moved to the connection. We place another car at the warehouse. It is loaded and we move it out. That transaction, we estimate, costs $2.40 to move the loaded car to the warehouse and deliver the empty back to the connection. The switching from the warehouse into the train ready for movement out of East St. Louis is $1.20. It consumes approximately four days of the Southern Railway car to perform that service. That is six dollars. So the total cost of moving that car from the connection to the warehouse, unloading it, re-loading it and bringing it out into train, is $9.60. We will now assume a case
231 where a shipment goes to a warehouse on a connecting track and we receive it from a connection loaded to move out in our train. That movement is as follows: The loaded car goes from the initial carrier to the warehouse. It is *is* there unloaded. We send one of our cars to the connection on which the warehouse is located. It is loaded and returned to us. The cost to deliver the car to the connection is 60 cents. The cost of getting the car to the connection and back into the train is $1.20 in most cases, owing to the peculiar location of the warehouses in East St. Louis. We have to absorb a switching charge of $1.50 into the warehouse and $1.50 out. That is three dollars. The value of the car for the time it is used, which would be 4 days at least, would be six dollars, making $10.80 that it costs to get that shipment from a warehouse on a connection. The difference, therefore, in the cost of a movement from a warehouse, as compared with a through movement varies from $6.30 to $7.50,

provided ideal conditions are secured and there is no delay to the movement.

Mr. BAXTER: In the case of a warehouse situated on another track, does your estimate of the expenses include the expense of the line which brought the car into St. Louis, a line other than your own?

Mr. SPENCER: It does not include their expense. It does include the expense of switching into the warehouse and switching out of the warehouse. This is an expense to the southern road and not to the northern carrier.

Mr. BAXTER: Assuming that the expense to the northern carrier that brings the car into East St. Louis would be the same as if it were brought in by the Southern Railway, what would it cost that company to switch the car from its line to the belt line that carries it to the warehouse?

Mr. SPENCER: In most instances the cost of delivering to them would be approximately the same as delivering direct to the Southern Railway.

Mr. BAXTER: Which is how much?

Mr. SPENCER: That would be about 60 cents. I would like to add that this does not include the expense of maintenance of way, maintenance of equipment, general expenses, taxes or interest on the cost of the road and cars. This is merely transportation expense.

Com'r CLEMENTS: What elements have you counted in?

Mr. SPENCER: The labor of the switchmen, the labor of the engineers and firemen, and the coal, oil and waste necessary,
232 and the necessary switchmen for throwing the switches and the yard masters' and clerks' salaries.

Mr. BAXTER: Explain to the Commission how you have arrived at the cost. You explained the items that you include. How did you get the average?

Mr. SPENCER: The average is based on our experience at East St. Louis for several years. We took past statistics showing the cost per unit moved of a car. In order to move a car from one place to another, if there are one or two or three moves, we estimate the cost per move.

Com'r CLEMENTS: How do you get at it?

Mr. SPENCER: We prepared statistics showing the daily movement. Each switching engine that handles a car furnishes that information. We know the cost from our cost sheets and get the average. This average is also taken at various other places where we have much tonnage.

Mr. BAXTER: What other places?

Mr. SPENCER: Louisville, Princeton and Evansville.

Mr. BAXTER: What do you find to be the average cost of movement?

A. About 30 cents per move, eliminating fixed charges.

Mr. BAXTER: And you arrive at that average by actual statistics at these places you have enumerated?

Mr. SPENCER: Yes, sir.

Com'r CLEMENTS: Are not some of these elements so mingled

with the general business that it would not be much more than a guess, for instance, oil and waste?

Mr. SPENCER: They are distributed to the engines.

Com'r CLEMENTS: Take the yard masters you refer to, are they engaged in the switching business exclusively?

Mr. SPENCER: Yes, sir. Of course they make up the trains. It is an average; that is all.

Mr. BAXTER: But it is an average based on actual statistics?

Mr. SPENCER: Yes, sir.

Defendant also offers in evidence Southern Railway tariffs as follows:

Division Sheet No. 1 to Southeastern Tariff No. 23, marked Defendant's Exhibit 35. Division Basis No. 6669, marked Defendant's Exhibit 36. Amendment No. 8 to Southern Ry. Co. I. C. C. No. 9614, marked Defendant's Exhibit 37. Amendment No. 20 to Sou. Ry. I. C. C. No. 9614, marked defendant's Exhibit 38. Amendment No. 21 to Sou. Ry. I. C. C. No. 9614, marked Defendant's
233 Exhibit 39. Amendment No. 23 to Sou. Ry. I. C. C. No. 9614, marked Defendant's Exhibit 40. Amendment No. 24 to Sou. Ry. I. C. C. No. 9614, marked Defendant's Exhibit 41. Amendment No. 25 to Sou. Ry. I. C. C. No. 9614, marked Defendant's Exhibit 42 Amendment No. 26 to Sou. Ry. I. C. C. No. 9614, marked Defendant's Exhibit 43.

Amendment No. 27 to Sou. Ry. Co. I. C. C. No. 9614, marked defendant's Exhibit No. 44. Also tariff of the Southern Railway Company, Northern Alabama Railway Company, Alabama Great Southern R. R. Co., and Augusta Southern Railroad Company, in connection with other transportation lines, marked Defendant's Exhibit 45.

All of the above tariffs are admitted subject to objection, and made a part of the record in this case, and are attached hereto.

And now on this 18th day of June A. D. 1906, the same being one of the Judicial days of this Court, this cause coming on for further proceedings, JAMES W. DYE was recalled and testified as follows, on behalf of the Petitioner:

By Mr. P. J. FARRELL, Attorney for Petitioner:

Q. Mr. Dye, have you made a further investigation of your books, in relation to the cars furnished at the warehouse in question, and if so, state whether or not upon such further investigation, the statement filed by you as Exhibit 1 in this case, is correct?

A. Yes, sir. I have made a further and more careful examination and I find that there are some mistakes in the summary filed by me as Exhibit 1 in this case.

Q. Have you any expense bills of hay shipped into East St. Louis and which were used in reconsigned shipments made by you involved in this investigation, on which there was something stamped or endorsed showing the reconsigned shipment to be part of a through shipment, if so, will you please present them.

A. I had some such expense bills, but I delivered them to you.

(Here conversation took place between Mr. Dye and Mr. Farrell, in which Mr. Dye contended that *that* he delivered to Mr. Farrell some such expense bills and Mr. Farrell contended that they had not been delivered to him.)

234 Q. Have you in your possession, a *se*-edule of switching rates of Southern Railway Company and Venice and Carondolet Railway Company at East St. Louis and Venice, Illinois No. I. C. C. No. C-428, effective April 1st-1904.

A. Yes Sir.

Witness produces schedule which is marked Petitioner's Exhibit 2 and introduced in evidence on behalf of Petitioner in this case and is attached hereto.

Mr. FARRELL to Mr. KRAMER:

Mr. FARRELL: At the former hearing of this case, Mr. Powell agreed to furnish a statement showing the amount paid by the Southern Railway Company for the fiscal year ending June 30th 1905 to foreign lines for use of foreign cars on the basis of per diem rental of 20c per car, and of the amount received by the Southern Railway Company from foreign lines for use of its cars on per diem basis of 20c per day. Have you that information?

Mr. Kramer furnished to Mr. Farrell a letter from Mr. T. C. Powell to Mr. E. C. Kramer bearing date of May 17th—1906 and a telegram from Mr. T. C. Powell to Mr. A. H. Plant bearing date of May 15th—1906 and telegram from Mr. A. H. Plant to Mr. T. C. Powell, bearing date of May 16th—1906 and telegram from Mr. A. H. Plant to Mr. T. C. Powell bearing date of May—16th—1906.

Mr. FARRELL: This is the information we desire.

This letter and telegrams are attached and marked Petitioner's Exhibit 3 and introduced in evidence in this cause and is attached hereto. Here the Petitioner rests.

The defendant offered in evidence an affidavit and statement of Edwin D. Whitman of cars furnished by the Southern Railway Company to East St. Louis Connecting Railway Company to be loaded at Union Warehouse of the Petitioner from June 1—1903 up to and including February 1—1905 and used in shipments involved in this suit, which affidavit and statement are introduced in evidence and marked Defendant's Exhibit 46, and is attached hereto.

Defendant offered in evidence an affidavit and statement of Charles Silliman of cars furnished to Petitioner at National Warehouse in the City of East St. Louis from the first day of June A. D. 1903, up to and including the first day of February A. D. 1905, for shipments involved in this suit, which affidavit and statement are introduced in evidence and marked Defendant's Exhibit 47, and is attached hereto.

Here the Defendant rests.

235 The above and foregoing, together with Exhibits therein referred to and introduced in evidence and attached hereto, is all of the evidence introduced on the trial of this cause.

Motion to Strike Out Report and Opinion of Commission.

UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

In the Circuit Court of the United States for the Eastern District of Illinois, to the May Term, A. D. 1905.

ST. LOUIS HAY & GRAIN COMPANY, Petitioner,
vs.
SOUTHERN RAILWAY COMPANY, Defendant.

Suit to Collect Reparation Fixed by Order of the Interstate Commerce Commission.

And now at the close of all of the evidence offered in the above entitled suit, comes the defendant, Southern Railway Company, by Claudian B. Northrop and Edward C. Kramer, its attorneys, and moves the Court to strike out from the evidence and exclude from consideration of this case, the Report and Opinion of the Interstate Commerce Commission, introduced by petitioner herein, and marked Exhibit "B" of its testimony, for the reason that said Interstate Commerce Commission by said Report and Opinion did not find the facts involved in said matter before said Commission as required by Section 16 of the Act to Regulate Commerce.

Because said report and opinion cannot be introduced as *prima facie* evidence of any matters involved before said Commission because the facts are not found by the Commission as required by law.

Because said Report and Opinion fails to show what the issues in the case before the Interstate Commerce Commission were, and what facts the Commission found in regard to such issues and said Report and Opinion fails to make suitable reference to the evidence adduced before the Interstate Commerce Commission, in regard to any particular question where there was a conflict of evidence showing how the Commission settled any disputed fact; because
236 said Report and Opinion failed to state as a fact whether or not there was any undisputed evidence in reference to any of the facts.

Because said Report and Opinion of the Commission is wholly irrelevant to the issues made by the pleadings before this Court in this case and makes no reference whatever to the main and material issue in this cause, to-wit, the reasonableness and justness of the reconsigning rate from East St. Louis to Southeastern Points.

Because said Report and Opinion cannot be introduced as *prima facie* evidence of any matter involved in this suit.

And to strike out from the evidence and exclude from consideration of this case all of the testimony introduced herein showing or tending to show that hay may be reconsigned at Cincinnati, Louisville, Evansville, Cairo, Memphis, Nashville or at any or either of said places without extra charge, because the petition filed before the Interstate Commerce Commission did not allege any undue or un-

reasonable prejudice or disadvantage against East St. Louis or against any person there located, and did not allege any undue or unreasonable preference or advantage in favor of said Ohio and Mississippi River Crossings, or in favor of any persons therein located, with reference to reconsignment charges, and no such issues were involved before the Interstate Commerce Commission, and none are involved here.

And to strike out all the testimony introduced in evidence in reference to notations or other data contained in tariffs to which Southern Railway Company is not a party. Because the Commission in its Report and Opinion found that no such issues was presented to it for trial.

CLAUDIAN B. NORTHROP,
EDW. C. KRAMER,
Attorneys for Defendant.

But the Court overruled said motion and refused to grant the same, to which action and decision of the Court in overruling said motion and in refusing to grant the same, defendant, by its counsel, then and there excepted for the reason that said Report and Opinion of the Interstate Commerce Commission introduced in evidence by the petitioner herein and marked Exhibit B of its testimony, does not contain a finding of facts involved in said matter before said Commission as required by Section 16 of the Act to Regulate Commerce; and because said Report and Opinion is not proper
237 and competent evidence to be introduced as *prima facie* evidence of matter involved before said Commission for the reason that the facts are not found and set forth in said Report and Opinion by said Commission as required by law; and because said Report and Opinion fails to show what the issues in the said cause before the Interstate Commerce Commission were and what facts the Commission found in regard to such issues; said Report and Opinion failed to make suitable reference to the evidence adduced before the Interstate Commerce Commission in regard to any particular question when there was a conflict of evidence showing how the Commission settled such disputed fact; and because said Report and Opinion fails to state as a fact whether or not there was any disputed evidence in reference to any of the facts; and because said Report and Opinion of the Commission is wholly irrelevant to the issues made by the pleadings before this Court in this case and makes no reference whatever to the main and material issues in this case to-wit, the reasonableness and justness of the reconsigning rate from East St. Louis to Southeastern points; and because said report and Opinion cannot be introduced as *prima facie* evidence of any of the matters involved in this case and for these reasons ought to be excluded from the evidence.

Because the evidence introduced herein showing or tending to show that hay may be reconsigned at Cincinnati, Louisville, Evansville, Cairo, Memphis Nashville or any or either of said places, without extra charge which is wholly irrelevant to the issues involved in this case in this Court, because the petition filed before the Inter-

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state Commerce Commission did not allege any undue or unreasonable prejudice or disadvantage against East St. Louis or against any person there located, and did not allege any undue or unreasonable preference or advantage in favor of said Ohio and Mississippi River crossings or in favor of any person there at located, with reference to reconsignment charges on shipments of hay.

Because the tariff sheets and rates of other railway companies introduced in evidence in this case to which defendant, Southern Railway Company, is not a party is irrelevant and incompetent testimony in this case.

238 *Motion to Remand Cause.*

UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

In the Circuit Court of the United States for the Eastern District of Illinois, to the May Term, A. D. 1906.

ST. LOUIS HAY & GRAIN COMPANY, Petitioner,
vs.
SOUTHERN RAILWAY COMPANY, Defendant.

Suit to Collect Reparation Fixed by Order of the Interstate Commerce Commission.

And now at the close of all the evidence in the case comes defendant, Southern Railway Company, by its attorneys, Claudian B. Northrup and Edward S. Kramer, and moves the Court to remand the case tried before the Interstate Commerce Commission upon which reparation was ordered and enforcement of which is sought in this case, back to the Interstate Commerce Commission for the following reasons:

1. Because the issues presented to the Interstate Commerce Commission were not passed upon and determined by said Interstate Commerce Commission.

2. Because petition filed before the Interstate Commerce Commission by St. Louis Hay & Grain Company in said case, in the fifth paragraph thereof, alleges that the reconsigning rate charged on shipments of hay from East St. Louis to Southeastern Points is unreasonable and that by reason thereof the petitioner has been compelled to pay unreasonable and unjust rates for the transportation of hay from East St. Louis to Southeastern points, in violation of Section 1 of the Act of Congress to Regulate Commerce Which said allegation was denied by the defendant in paragraph 5 of its answer filed in said case before the Interstate Commerce Commission, and in addition to said direct denial in same paragraph 5 of defendant's answer, defendant Southern Railway Company, alleged that the charge for reconsignment of hay from East St. Louis to Southeastern Points is in all cases invariably one cent less than the rate from East St. Louis proper to said Southeastern Points.

239 Said pleadings directly present the issue of the reasonableness and justness of the said reconsigning rate from East St. Louis to said Southern Points, which said issue was a material issue and was not passed upon by said Interstate Commerce Commission.

3. Defendant is entitled, as a matter of law, to have the Interstate Commerce Commission in the first instance pass upon all issues presented, and where the Interstate Commerce Commission fails to pass upon material issues presented to it, it is the duty of the Court to refer the matter back to the Interstate Commerce Commission to be proceeded in according to law.

4. Because said Interstate Commerce Commission did not make a report in writing in said case including findings of fact upon which the conclusions of the Interstate Commerce Commission were based as required by law, but instead thereof filed a report made up of mere conclusions, which report failed to show what the issues in the case were, and what facts the Interstate Commerce Commission found in regard to such issues, and because said report failed to make suitable references to the evidence adduced before the Interstate Commerce Commission in regard to the particular questions and issues presented; and because said report failed to show whether or not there was any conflict in the proof before the Interstate Commerce Commission, and failed to make reference to the testimony taken before it showing how the Interstate Commerce Commission had settled any disputed facts; and because said report failed to state whether or not the evidence in regard to some or any of the issues was undisputed, that is to say, said report of the Interstate Commerce Commission failed to conform to the requirements of the law.

CLAUDIAN B. NORTHRUP &
EDW. C. KRAMER,
Attorneys for D——.

But the Court overruled said motion and refused to grant the same to which action and decision of the Court in overruling said motion and in refusing to grant the same, the defendant, by its counsel then and there excepted for the reason that the Interstate Commerce Commission did not pass upon and determine the issues presented to it in this matter; and because the petition filed before the Interstate

240 Commerce Commission in this matter in the 5th paragraph thereof alleges that the reconsigning rate charged on shipments of hay from East St. Louis to Southeastern points is unreasonable, and that by reason thereof petitioner has been compelled to pay unreasonable and unjust rates for the transportation of hay from East St. Louis to Southeastern points in violation of Section 1 of the Act to Regulate Commerce, which allegation was denied by defendant, Southern Railway Company, in the 5th paragraph of the answer filed by it before the said Commission, and the pleadings in said matter before said Commission directly presented the issue of the reasonableness and justness of said reconsigning rate from East St. Louis to Southeastern points which said issues was a material one and was not passed upon by said Commission.

Because the defendant is entitled as a matter of law to have the

Interstate Commerce Commission in the first instance pass upon all issues presented, and where the Interstate Commerce Commission fails to pass upon material issues presented to it, it is the duty of the Circuit Court of the United States in a suit brought to enforce reparation made by the Commission to refer the matter back to the Commission to be proceeded in according to law.

Because said Commission did not make a report in writing in the case before it including findings of fact upon which the conclusions of the Commission were based as required by law, but instead thereof filed a report made up of mere conclusions which report failed to show what the issues in the case were and what facts the Interstate Commission found in regard to such issues; and because said report failed to make suitable reference to the evidence adduced before the Interstate Commerce Commission in regard to the particular questions and issues presented.

Because said report failed to show whether or not there was any conflict in the proof before it and failed to make reference to the testimony taken before it showing how it settled any disputed facts.

Because said report failed to state whether or not the evidence in regard to some or any of the issues was undisputed that is to say, said report of the said Commission failed to conform to the requirements of law, and for these reasons this matter should be referred back to the Commission for further action.

241 *Motion to Find for Defendant.*

UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

In the Circuit Court of the United States for the Eastern District of Illinois, to the May Term, A. D. 1906.

ST. LOUIS HAY & GRAIN COMPANY, Petitioner,
vs.
SOUTHERN RAILWAY COMPANY, Defendant.

Suit to Collect Reparation Fixed by Order of the Interstate Commerce Commission.

And now at the close of all of the evidence in the above entitled suit comes the defendant, Southern Railway Company, by its attorneys, Claudian B. Northrup and Edward C. Kramer, and moves the Court to find the issues herein in favor of the defendant, and render judgment herein in favor of the defendant for its costs in this cause expended, and for reason for said motion the defendant states that the evidence herein is wholly insufficient to sustain a finding and judgment in favor of the petitioner.

CLAUDIAN B. NORTHRUP &
EDW. C. KRAMER,
Attorneys for Defendant.

But the Court overruled said motion and refused to grant the same to which action and decision of the Court in overruling said motion and refusing to grant the same, defendant by its counsel then and there excepted for the reason.

That all of the evidence which is tendered herewith, shows that it is wholly insufficient to support a finding in favor of the petitioner and a judgment in its favor enforcing the order made by the Interstate Commerce Commission; and because said evidence conclusively shows that the defendant is entitled to a judgment dismissing the petition and for its costs in this cause expended.

242 Whereupon the defendant, the Southern Railway Company, presented the following written request to the Court to find the facts therein stated, which said written request for finding of facts is in words and figures as follows, to-wit:

Request for Findings of Fact.

UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

In the Circuit Court of the United States for the Eastern District of Illinois, to the May Term, A. D. 1906.

ST. LOUIS HAY AND GRAIN COMPANY, Petitioner,
vs.
SOUTHERN RAILWAY COMPANY, Defendant.

Petition to Enforce Order of the Interstate Commerce Commission.

The defendant, the Southern Railway Company, requests the Court to find the following facts:

Petitioner, St. Louis Hay & Grain Company, has two warehouses at East St. Louis, Illinois, one located immediately south of Eads Bridge between Front Street and the Mississippi River. This warehouse is on the tracks of the Wiggins Ferry Company, and is known as the Union Warehouse. The other warehouse is known as the National Warehouse and is located on the corner of 10th Street and the Southern Railway Company's tracks.

The defendant, the Southern Railway Company, requests the Court to find the following facts:

There are about 75 miles of switch tracks at East St. Louis of which the Southern Railway owns about 20 miles.

Southern Railway Company has tracks at East St. Louis which reach from a point above the Merchants Bridge near what is known as the North Incline, running through East St. Louis to a point below East St. Louis which is known as the Dyke Yard, and at different points in East St. Louis are yards belonging to the Southern Railway Company respectively known as the Brooklyn Yards, Denverside Yards, Sixth Street Yards and the Dyke Yard, all neces-

243 sary and used for the purpose of switching cars from and to trains going to the south and from and to various industries

located in East St. Louis, Illinois. The switching and transfer situation in East St. Louis is complicated.

The defendant, the Southern Railway Company requests the Court to find the following fact:

Rates south of the Ohio River are the foundation rates for hay going from East St. Louis to southeastern territory.

The defendant, the Southern Railway Company requests the Court to find the following facts:

Grain and hay originating in the States of Ohio, Indiana, Illinois, Nebraska, Missouri, Kansas, Arkansas and Texas is shipped into Southeastern territory. This hay and grain crosses the Ohio River at the gateways of Cincinnati, Louisville, Evansville, Cairo etc., and crosses the Mississippi River at the gateways of East St. Louis, Cairo, Memphis, New Orleans, etc.

The defendant, the Southern Railway Company requests the Court to find the following facts:

Southeastern Territory comprises nearly all of Alabama, part of Tennessee, all of Georgia, all of Florida, except the extreme western part of Florida and part of South Carolina. Atlanta is a principal point in the southeastern territory.

The defendant, the Southern Railway Company requests the Court to to find the following facts:

East St. Louis is classed with St. Louis and together they constitute the largest primary hay market of the United States.

The defendant, the Southern Railway Company requests the Court to find the following facts:

The defendant, the Southern Railway Company, in the introduction of its evidence in this case used Atlanta Ga., as a representative point in the southeastern territory with reference to local shipments of hay from East St. Louis to southeastern territory, and reconsigned shipments of hay from East St. Louis to southeastern territory and through shipments of hay originating at points north and east of East St. Louis and passing through East St. Louis to southeastern territory, and used Bowen, Ills., as a representative point in through shipments of hay originating north and west of East St. Louis
244 and passing through East St. Louis to southeastern Territory.

Atanta Georgia fairly represents points of consumption in southeastern territory, and Bowen Illinois, fairly represents points of production north and west of East St. Louis, with reference to rates and shipments involved in this suit.

The defendant, the Southern Railway Company requests the Court to find the following facts:

The rate on hay from the Ohio River crossings to Atlanta from June 1st/1903, to Feb-1st-1905 was 24 cents per hundred pounds.

The defendant, the Southern Railway Company, during said time had a local rate on hay from East St. Louis to Atlanta of 5 cents above the rates from the Ohio River crossings viz, 29 cents per hundred pounds and a reconsigning rate of 4 cents above the rate from Ohio River crossings viz, 28 cents per hundred pounds and during said time accepted from other connecting railway lines a charge of 2 cents above the rates from Ohio River crossings for its haul from East St.

Louis to Southeastern points which was 26 cents per hundred pounds to Atlanta on through shipments which had originated at points north and west of East St. Louis.

The defendant, the Southern Railway Company requests the Court to find the following facts:

That in all shipments in which the defendant, the Southern Railway Company, accepted a charge of 2 cents above the rates from Ohio River Crossings for hauling hay from East St. Louis to points in southeastern territory, they were shipments that had originated at points north and west of East St. Louis or beyond East St. Louis and were hauled into East St. Louis by a connecting carrier in which the connecting carrier represented to Southern Railway Company a way bill showing that the hay had originated at some point north or west or beyond East St. Louis and had been hauled into East St. Louis by said connecting carrier and was destined to some point in Southeastern territory and said Southern Railway Company accepted the car or cars so delivered to it from such connecting carrier and hauled them to the point of destination, and accepted as its share of the entire charge, a charge of 2 cents per hundred pounds above the rate from Ohio River crossings to points of destination, and in the entire transaction, the Southern Railway Company dealt with and
245 received its share of the through charges from the connecting carrier, and had no transaction of any kind or character with the shipper, and if the original bill of lading was not from the point of origin to the point of final destination or in other words, the point of destination was changed while the hay was in transit, or after it had arrived at East St. Louis, this fact was not made known to the Southern Railway Company.

The defendant, the Southern Railway Company requests the Court to find the following facts:

In all cases in which the Southern Railway Company charged the reconsigning rate of 4 cents above the rate from Ohio River crossings to points in southeastern territory, they were in cases in which the shipper presented to the Southern Railway Company an expense bill showing that he had paid transportation charges on a car load of hay from some points of origin north or west or beyond East St. Louis, to East St. Louis. Upon this evidence Southern Railway Company billed a car load of hay for the shipper from East St. Louis to a point in southeastern territory at the reconsigning rate and in the entire transaction dealt only with the shipper and had no transaction of any kind or character with the connecting carrier and these reconsignment charges were paid by the shipper to the Southern Railway Company.

In all such shipments, the shipper was not compelled to ship out the identical hay that had been shipped in as shown by his expense bill but he might ship any hay he had in his warehouse or other places in East St. Louis.

The defendant, the Southern Railway Company requests the Court to find the following facts:

All of the tariffs introduced in evidence in this case which shows that the Southern Railway Company accepts a charge of 2 cents

above the rates from the Ohio River Crossings to Southeastern territory on hay originating at points north or west or beyond East St. Louis and shipped directly through East St. Louis to points in Southeastern territory show such charge to be a division of the through rate.

The defendant, the Southern Railway Company, requests the Court to find the following facts:

The reconsigning rate on hay of 4 cents above the rate from Ohio River Crossings was made by and is the result of competition.

246 The defendant, the Southern Railway Company requests the Court to find the following fact:

That the rate on hay and grain from Ohio River crossings to southeastern territory was made by and was the result of competition among rail lines hauling grain and hay from such Ohio River crossings to Southeastern territory, and the reconsigning rate of 4 cents above the rate from Ohio River crossings to southeastern territory was made by and was the result of competition among railway companies hauling grain and hay from East St. Louis to Southeastern territory.

The defendant, the Southern Railway Company requests the Court to find the following facts:

The following are the distances by the various lines from and to points involved in this controversy:

East St. Louis to Atlanta—via L. & N.—N. C. & St. L.:

To Evansville	162 miles.
To Nashville	157 miles.
To Chattanooga	151 miles.
To Atlanta	138 miles.
	608 miles.

Nashville to Atlanta—via L. & N.—N. C. & St. L.:

L. & N.	157 miles.
N. C. & St. L.	289 miles.
	446 miles.

Louisville to Atlanta—Southern Ry.—C. N. O. & T. P.—W. & A.:

To Danville	94 miles.
To Chattanooga	222 miles.
Beyond	138 miles.
	454 miles.

Cincinnati to Atlanta—via I. C.—N. C. & St. L.:

I. C. to Martin	60 miles.
N. C. & St. L. Beyond	430 miles.
	490 miles.

Via I. C.—Southern Ry. and Emory Gap:

N. C. to Nashville	196 miles.
To Chattanooga	138 miles.
Beyond	151 miles.
	485 miles.

247 Memphis to Atlanta—via K. C. M. & B. and Southern Ry.:

To Birmingham	251 miles.
Southern Railway	167 miles.
	418 miles.

East St. Louis to Cairo	151 miles.
East St. Louis to Evansville	162 miles.
East St. Louis to Louisville	271 miles.

The defendant, the Southern Railway Company requests the Court to find the following facts:—

St. Louis Hay and Grain Company frequently makes through shipments from point of original purchase to point of destination with out reconsigning. The right of making through shipments from point of origin to point of ultimate destination is open to St. Louis Hay and Grain Company without discrimination.

The defendant, the Southern Railway Company requests the Court to find the following facts:

The reconsigning rate of 4 cents above the rate from Ohio River Crossings to Southeastern Territory is shown to be just and reasonable for the following reasons:

The evidence in this case shows

(1) That said reconsigning rate is the result of competition in the transportation of hay and grain by the rail lines and the water lines.

(2) That the rate of hay from East St. Louis to Atlanta since 1879 has been reduced from 54 cents per hundred pounds to 28 cents per hundred pounds.

(3) That the reconsigning rate on hay from East St. Louis to Southeastern points is low when compared with the rate on hay in other localities where the circumstances and conditions are similar.

(4) Because the rate on hay from East St. Louis to Southeastern territory is effected by competition, hay there meets in coarse foods and substitutes for hay.

(5) The said rate is reasonable and just in the opinion of expert traffic men.

(6) Because the rate on hay from East St. Louis to Southeastern points is effected by the competition that hay shipped to Southeastern points has to meet in hay and other like products shipped from other markets.

(7) Hauling grain is more remunerative to carriers than hauling hay and the reconsignment rates on hay and grain are the
248 same, while in some other sections the rate on hay is from 25 to 50 per cent. higher than the rate on grain.

(8) This rate has been made by the short lines. Southern Railway Company necessarily had to meet these rates or not participate in the traffic, and it is one of the long lines.

(9) East St. Louis—St. Louis under said rates has grown to be the largest hay market in the United States.

The defendant, the Southern Railway Company requests the Court to find the following facts:

A through shipment of hay from points north and west and beyond East St. Louis to Southeastern points received by the Southern Railway Company from a connecting carrier at East St. Louis requires two necessary switching movements on the part of the Southern Railway Company, in receiving said car from the connecting carrier and placing same in the train for the southeast.

A reconsigned shipment from the National Warehouse located on the line of the Southern Railway Company in East St. Louis requires eight necessary switching movements on the part of the Southern Railway Company in placing the empty car at the warehouse; taking out the loaded car and placing it on the train for the Southeast. That a reconsigned shipment from the Union Warehouse requires ten necessary switching movements in placing the empty car at the warehouse and receiving the loaded car and placing it in the train for the Southeast, five of these movements are made by the Wiggins Ferry Company.

The defendant, the Southern Railway Company requests the Court to find the following facts:

The cost of a switching movement in the case of a reconsigned shipment to the Southern Railway Company in East St. Louis and the cost of a switching movement in connection with through shipments in East St. Louis is 30 cents per movement, and Southern Railway Company pays to Wiggins Ferry Company $1.50 for the 5 movements made by it in a reconsigned shipment from the Union Warehouse over the lines of the Southern Railway Company.

The defendant, the Southern Railway Company requests the Court to find the following facts:

A car is in use in East St. Louis on the average of one day in a through shipment and a car is in use in East St. Louis on an everage of five days in each reconsigned shipment.

249 The defendant, the Southern Railway Company requests the Court to find the following facts:—

It costs the Southern Railway Company 52 cents per day to actually maintain its freight cars.

The defendant, the Southern Railway Company requests the Court to find the following facts:

75 cents per day is a fair and reasonable charge to make for a car while in use at East St. Louis in a reconsigned shipment.

But the Court refused to find as facts the said special findings of fact submitted by the defendant and rendered the following ruling and opinion thereon, to-wit:

Opinion.

The special findings of fact submitted by the Court and recited in its final order and judgment in this cause are considered to include all that is material contained in the proposed findings of fact submitted to the Court by the defendant, and said special findings of fact so substituted by the Court are considered as containing all that is material or necessary to be found, that is material or necessary to a proper decision of the case, for such reasons the proposed findings of fact, and each of them, submitted by the defendant are rejected.

WRIGHT, *J.*

Exceptions of Defendant.

To which action of the Court in rejecting and refusing to find the first special finding of fact submitted by the defendant on the trial of this cause, the defendant then and there, by its counsel, excepted; because the said first special finding of fact is material to the issues involved in this case; because the said first special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said first special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this cause do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said first special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and
250 judgment in this case do not include all that is material in the first special finding of fact so submitted by the defendant, nor do they contain the said first special finding of fact nor the substance thereof.

To which action of the Court in rejecting and refusing to find the second special finding of fact submitted by the defendant on the trial of this cause, the defendant, then and there, by its counsel, excepted, because the said second special finding of fact is material to the issues involved in this case; because the said second special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said second special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said second special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order

and judgment in this case do not include all that is material in the said second special finding of fact so submitted by the defendant, nor do they contain the said second special finding of fact nor the substance thereof.

To which action of the Court in rejecting and refusing to find the third special finding of fact submitted by the defendant on the trial of this cause, the defendant then and there, by its counsel, excepted, because the said third special finding of fact is material to the issues involved in this case; because the said third special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said third special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said third special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and
251 judgment in this case do not include all that is material in the said third special finding of fact so submitted by the defendant, nor do they contain the said third special finding of fact nor the substance thereof.

To which action of the Court in rejecting and refusing to find the fourth special finding of fact submitted by the defendant on the trial of this cause, the defendant then and there, by its counsel, excepted, because the said fourth special finding of fact is material to the issues involved in this case; because the said fourth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said fourth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said fourth special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said fourth special finding of fact so submitted by the defendant, nor do they contain said fourth special finding of fact nor the substance thereof.

To which action of the Court, in rejecting and refusing to find the fifth special finding of fact submitted by the defendant on the trial of this case, the defendant, then and there, by its counsel, excepted, because the said fifth special finding of fact is material to the issues involved in this cause; because the said fifth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said fifth special finding of fact is necessary to a proper decision of the case; because the special find-

ings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said fifth special finding of fact is material and necessary to be found and is material and necessary to the proper decision of this case, and because the special findings of
252 fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in said fifth special finding of fact so submitted, by the defendant, nor do they contain said fifth special finding of fact nor the substance thereof.

To which action of the Court in rejecting and refusing to find the sixth special finding of fact submitted by the defendant on the trial of this cause, the defendant, then and there, by its counsel, excepted; because the said sixth special finding of fact is material to the issues involved in this case; because the said sixth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said sixth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said sixth special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in said sixth special finding of fact so submitted by the defendant, nor do they contain the said sixth special finding of fact nor the substance thereof.

To which action of the Court in rejecting and refusing to find the seventh special finding of fact submitted by the defendant on the trial of this cause, the defendant then and there, by its counsel, excepted; because the said seventh special finding of fact is material to the issues involved in this case; because the said seventh special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said seventh special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said seventh special finding of fact is material and necessary to be found, and is material and necessary to a proper decision of this case; and because the special findings
of fact substituted by the Court and recited in its final order
253 and judgment in this case do not include all that is material in the said seventh special finding of fact so submitted by the defendant, nor do they contain the *final* seventh special finding of fact nor the substance thereof.

To which action of the Court in rejecting and refusing to find the eighth special finding of fact submitted by the defendant on the trial of this case, the defendant then and there, by its counsel, excepted; because the said eighth special finding of fact is material to the issues involved in this case; because the said eighth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said eighth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said eighth special finding of fact is material and necessary to be found, and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said eighth special finding of fact so submitted by the defendant, nor do they contain the said eighth special finding of fact nor the substance thereof.

To which action of the Court in rejecting and refusing to find the ninth special finding of fact submitted by the defendant on the trial of this cause, the defendant then and there, by its counsel, excepted; because the said ninth special finding of fact is material to the issues involved in this case; because the said ninth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said ninth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said ninth special finding of fact is material and necessary to be found, and is material and necessary to a proper decision of this case, *nad* because the special findings of fact substituted by the Court and recited in its final order and judgment in this
254 case do not include all that is material in the said ninth special finding of fact so submitted by the defendant, nor do they contain the said ninth special finding of fact nor the substance thereof.

To which action of the Court in rejecting and refusing to find the tenth special finding of fact submitted by the defendant on the trial of this case, the defendant, then and there, by its counsel, excepted, because the said tenth special finding of fact is material to the issues involved in this case; because the said tenth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said tenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain

all that is material or necessary to a proper decision of the case; because the said tenth special finding of fact is material and necessary to be found, and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said tenth special finding of fact so submitted by the defendant, nor do they contain the said tenth special finding nor the substance thereof.

To which action of the Court, in rejecting and refusing to find the eleventh special finding of fact submitted by the defendant on the trial of this cause, the defendant, then and there, by its counsel, excepted, because the said eleventh special finding of fact is material to the issues involved in this case; because the said eleventh special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said eleventh special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said eleventh special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of
fact substituted by the Court and recited in its final order and
255 judgment in this case do not include all that is material in the said eleventh special finding of fact so submitted by the defendant, nor do they contain the said eleventh special finding of fact nor the substance thereof.

To which action of the Court in rejecting and refusing to find the twelfth special finding of fact submitted by the defendant on the trial of this cause, the defendant, then and there, by its counsel, excepted; because the said twelfth special finding of fact is material to the issues involved in this case; because the said twelfth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said twelfth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said twelfth special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said twelfth special finding of fact so submitted by the defendant, nor do they contain the said twelfth special finding of fact nor the substance thereof.

To which action of the Court in rejecting and refusing to find the thirteenth special finding of fact submitted by the defendant on the trial of this cause, the defendant, then and there, by its counsel,

excepted; because the said thirteenth special finding of fact is material to the issues involved in this case; because the said thirteenth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said thirteenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said thirteenth special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the
256 special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said thirteenth special finding of fact so submitted by the defendant, nor do they contain the said thirteenth special finding of fact nor the substance thereof.

To which action of the Court in rejecting and refusing to find the fourteenth special finding of fact submitted by the defendant on the trial of this cause, the defendant, then and there, by its counsel, excepted; because the said fourteenth special finding of fact is material to the issues involved in this case; because the said fourteenth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said fourteenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said fourteenth special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case; and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said fourteenth special finding of fact so submitted by the defendant, nor do they contain the said fourteenth special finding of fact nor the substance thereof.

To which action of the Court in rejecting and refusing to find the fifteenth special finding of fact submitted by the defendant on the trial of this cause, the defendant, then and there, by its counsel, excepted; because the said fifteenth special finding of fact is material to the issues involved in this case; because the said fifteenth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said fifteenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material and necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said fifteenth special finding of fact is material and necessary to be found and is material and necessary

to a proper decision of this case; and because the special find-
257 ings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said fifteenth special finding of fact so submitted by the defendant, nor do they contain the said fifteenth special finding of fact nor the substance thereof.

To which action of the Court in rejecting and refusing to find the sixteenth special finding of fact submitted by the defendant on the trial of this cause, the defendant then and there, by its counsel, excepted, because the said sixteenth special finding of fact is material to the issues involved in this case; because the said sixteenth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said sixteenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found, because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said sixteenth special finding of fact is material and necessary to be found, and is material and necessary to a proper decision of this case; and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said sixteenth special finding of fact so submitted by the defendant, nor do the- contain the said sixteenth special finding of fact nor the substance thereof.

To which action of the Court in rejecting and refusing to find the seventeenth special finding of fact submitted by the defendant on the trial of this cause, the defendant, then and there, by its counsel, excepted; because the said seventeenth special finding of fact is material to the issues involved in this case; because the said seventeenth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said seventeenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said seventeenth special finding of fact is material and necessary to be found and is ma-
258 terial and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said seventeenth special finding of fact so submitted by the defendant nor do they contain the said seventeenth special finding of fact; nor the substance thereof.

To which action of the Court in rejecting and refusing to find the eighteenth special finding of fact submitted by the defendant on the trial of this cause, the defendant, then and there by its counsel, excepted; because the said eighteenth special finding of fact is material to the issues involved in this case; because the said eighteenth

special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said eighteenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said eighteenth special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in said eighteenth special finding of fact so submitted by the defendant, nor do they contain the said eighteenth special finding of fact, nor the substance thereof.

To which action of the Court in rejecting and refusing to find the nineteenth special finding of fact submitted by the defendant on the trial of this cause, the defendant, then and there by its counsel, excepted; because the said nineteenth special finding of fact is material to the issues involved in this case; because the said nineteenth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said nineteenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary
259 to a proper decision of the case; because the said nineteenth special finding of fact is material and necessary to be found, and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said nineteenth special finding of fact so submitted by the defendant, nor do they contain the said nineteenth special finding of fact nor the substance thereof.

To which action of the Court in rejecting and refusing to find the twentieth special finding of fact submitted by the defendant on the trial of this cause, the defendant, then and there, by its counsel, excepted; because the said twentieth special finding of fact is material to the issues involved in this case; because the said twentieth special finding of fact is supported by the undisputed evidence introduced on the trial of this cause; because the said twentieth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said twentieth special finding of fact is material and necessary to be found, and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final

order and judgment in this case do not include all that is material in the said twentieth special finding of fact so submitted by the defendant, nor do they contain the said twentieth special finding of fact nor the substance thereof.

To which action of the Court in rejecting and refusing to find the twenty-first special finding of fact submitted by the defendant on the trial of this cause, the defendant, then and there by its counsel, excepted; because the said twenty-first special finding of fact is material to the issues involved in this case; because the said twenty-first special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said twenty-first special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is ma-
260 terial or necessary to a proper decision of the case; because the said twenty-first special finding of fact is material and necessary to be found, and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said twenty-first finding of fact so submitted by the defendant, nor do they contain the said twenty-first special finding of fact, nor the substance thereof.

And thereupon at the close of all the evidence, the defendant, by its counsel, presented the following written request to the court.

Request for Propositions of Law.

UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

In the Circuit Court of the United States for the Eastern District of Illinois, to the May Term, A. D. 1906.

ST. LOUIS HAY AND GRAIN COMPANY, Petitioner,
vs.
SOUTHERN RAILWAY COMPANY, Defendant.

Suit to Collect Reparation Fixed by Order of the Interstate Commerce Commission.

The defendant, the Southern Railway Company, requests the Court to hold the following proposition of law as applicable in this case:

1. The Act of Congress entitled "An Act to regulate Commerce" as amended March 2nd-1889, provides that whenever an investigation shall be made by the Interstate Commerce Commission of the facts stated in a petition filed by any person complaining of anything done or omitted to be done by any common carrier subject to the provisions of said Act, it shall be the duty of the Commission to

make report in writing with respect to such complaint, which report shall include the findings of fact upon which the conclusions of the Commission are based. That unless the Commission does so find the facts and set them forth in writing in its report, the report
261 and conclusions of the Commission cannot be introduced in evidence on a trial in a Circuit Court of the United States to enforce the order of the Commission made with respect to such complainants. Held.

And the Court held the said proposition as law applicable to this case and marked the same "Held."

The defendant, the Southern Railway Company, requests the Court to hold the following propositions of law as applicable to this case:

2. The Act of Congress entitled "An Act to regulate Commerce" as amended March 2nd, 1889, provides that before reparation can be recommended or ordered by the Interstate Commerce Commission to any person with respect to the facts alleged in a Petition making a complaint, it must be found as a fact by the Commission in its report that the person making the complaint has been injured. Held.

And the Court held the said proposition as law applicable to this case and marked the same "Held."

The defendant, the Southern Railway Company, requests the Court to hold the following proposition of law as applicable in this case.

3. Where a petition or complaint is filed before the Interstate Commerce Commission under and by virtue of the Act to regulate Commerce in which issues are made as to whether or not a Railway Company or Railway Companies are unjustly discriminating against a shipper in the charge of freight rates, or are giving any undue preference or advantage to any other shipper or shippers, or are charging a shipper unreasonable and unjust freight rates it is the duty of the Commission, to pass upon and determine such issues, and if a final order is made by the Commission in any such matter without passing upon and determining such issues, such final order of the Interstate Commerce Commission, is unlawful and cannot be enforced in a Circuit Court of the United States. Held.

And the Court held the said proposition as law, applicable to this case and marked the same "Held".

The defendant, the Southern Railway Company, requests the Court to hold the following proposition of law as applicable in this case:

4. The Report of the Interstate Commerce Commission and its conclusions entitled "Report and Opinion of the Commission in St. Louis Hay and Grain Company *vs.* Mobile & Ohio Railroad Company *et al.*," introduced in evidence in this case in this Court
262 by Petitioner and marked petitioner's "Exhibit B" does not contain findings of fact and findings of fact are not so prepared and arranged in said Report as required by law so that said report can be introduced as evidence in this case. Refused.

But the Court refused to hold the above and foregoing proposition of law as applicable in this case, to which action of the Court in refusing to hold said proposition of law as applicable in this case,

the defendant, by its Counsel, then and there excepted for the following reasons:

Because the said report and Opinion of the Commission introduced as evidence herein as Petitioner's Exhibit "B" does not find the facts, and the facts are not so prepared and arranged in said report so that the same may be introduced as evidence.

The defendant, the Southern Railway Company requests the Court to hold the following proposition of law as applicable in this case:

5. Where a petition is filed in the Circuit Court of the United States to enforce an order for reparation made by the Interstate Commerce Commission, only those issues can be tried in the said Circuit Court that were presented to the said Commission. Held.

And the Court held the said proposition as law applicable in this case and marked the same "Held."

The defendant, the Southern Railway Company, requests the Court to hold the following proposition of law as applicable in this case:

6. Where a petition and complaint is filed before the Interstate Commerce Commission under and by virtue of the Act to Regulate Commerce, and issues are made upon such petition and complaint, it is the duty of the Commission to pass upon each and every material issue made, and if the Commission upon an investigation makes an order for reparation and suit is brought in a Circuit Court of the United States to enforce such order, and it is there made to appear that said Commission did not pass upon each and every material issue made before the Commission, it is the duty of the Circuit Court of the United States, to remand the cause to the said Commission for further proceedings according to law.

But the Court refused to hold said proposition as submitted as law applicable in this case but on its own motion modified the same so as to read as follows:

263 Where a petition and complaint is filed before the Interstate Commerce Commission under and by virtue of the Act to regulate Commerce and issues are made upon such petition and complaint, it is the duty of the Commission to pass upon each and every material issue made, and if the Commission upon investigation makes an order for reparation and suit is brought in a Circuit Court of the United States to enforce such order, and it is there made to appear that said Commission did not pass upon each and every material issue made before the Commission, it is the duty of the Circuit Court of the United States to refuse to enforce the order.

And as so modified held the same as law applicable in this case and marked the same "Held" as so modified. To which action of the Court in so modifying the said proposition as aforesaid, and in refusing the said proposition as submitted, the defendant by its Counsel then and there excepted.

Because where a petition and complaint is filed before the Interstate Commerce Commission under and by virtue of an act to regulate Commerce and issues are made upon such petition and complaint, it is the duty of the Commission to pass upon each and every material issue made, and if the Commission upon investigation

makes an order for reparation and suit is brought in a Circuit Court of the United States to enforce such order, and it is there made to appear that said Commission did not pass upon each and every material issue made before the Commission, it is the duty of the Circuit Court of the United States, to remand the cause to the said Commission for further proceedings according to law, and because the said proposition of law as submitted is material to the issues involved in this case, and because the defendant having presented to the Court on the trial of this cause a motion to remand the same to the Interstate Commerce Commission for further proceedings according to law. It was entitled to have the Court pass upon a proposition of law as to whether or not under the conditions named in said proposition of law, it was the duty of the Court to remand the said case as therein stated.

The defendant, the Southern Railway, requests the Court to hold the following proposition of law as applicable in this case:

7. That one of the material issues made before the Commission in this case was whether or not the reconsigning rate from East St. Louis to Southeastern points was a reasonable and just rate; that this issue was a material one in this case, and the Commission did
264 not pass upon and determine the same. Refused.

But the Court refused to hold the above and foregoing proposition of law as applicable in this case, to which action of the Court in refusing to hold said proposition of law as applicable in this case, the defendant by its Counsel, then and there excepted for the following reasons:

Because the petition filed before the Interstate Commerce Commission and filed herein as Petitioner's Exhibit "A" alleged in paragraph 5 thereof, that the reconsigning rate from East St. Louis to Southeastern points was unreasonable and unjust, which allegation in said petition was denied by the answer of the Southern Railway Company before said Commission, which issue was a material one and the Report and Conclsions of the Commission filed herein as Petitioner's Exhibit "B" shows that the Commission did not pass upon said issue.

The defendant, the Southern Railway Company requests the Court to hold the following proposition of law as applicable in this case:

8. That one of the material issues made before the Commission in this case was whether or not the reconsigning rate from East St. Louis to Southeastern points was a reasonable and just rate. Held.

And the Court held the said proposition as law applicable in this case and marked the same "Held."

The defendant, the Southern Railway Company requests the Court to hold the following proposition of law as applicable in this case:

9. The petition filed before the Interstate Commerce Commission introduced herein as Petitioner's Exhibit "A." in this case, does not complain of any undue or unreasonable prejudice or disadvantage to the localities and markets of East St. Louis or St. Louis; nor of any undue or unreasonable preference or advantage to Cincinnati, Louisville, Evansville, Cairo, Memphis and Nashville, or either or any of them or other localities, and no issue of any undue or unreasonable prejudice or disadvantage against or undue or unreason-

able preference or advantage to in favor of any localities or markets was presented to the Commission in said case for determination. And there is no such issue in this case before this Court. Refused.

But the Court refused to hold the above and foregoing
265 proposition of law as applicable in this case, to which action of the Court in refusing to hold said proposition of law as applicable in this case, the defendant, by its counsel, then and there excepted, for the following reasons:

Because in the petition introduced in evidence herein and marked Exhibit A there is no allegation of any undue or unreasonable prejudice or disadvantage against the markets and localities of East St. Louis or St. Louis, nor is there any allegation of any undue or unreasonable preference or advantage in favor of the markets and localities of Cincinnati, Louisville, Evansville, Cairo, Memphis and Nashville, or either or any of them or other localities; nor is there any allegation in the pleadings before this Court in reference to such matters, and no such issue is made by the pleadings in this Court.

The defendant, the Southern Railway Company requests the Court to hold the following proposition of law as applicable in this case:

10. A through freight rate may properly be less than the sum of the locals to or from a division point. Held.

And the Court held the said proposition as law applicable in this case and marked the same "Held."

The defendant, the Southern Railway Company requests the Court to hold the following proposition of law as applicable in this case:

11. The portion of a through rate received by a common carrier for its part of a haul on a through shipment cannot be compared with the local rate between the same points, for the purpose of determining whether or not there is a discrimination against the local shipper. Held.

And the Court held the said proposition as law applicable in this case and marked the same "Held."

The defendant, the Southern Railway Company, requests the Court to hold the following proposition of law as applicable in this case:

12. The portion of a through rate received by a common carrier for its part of a haul on a through shipment cannot be compared with the local rate between the same points, for the purpose of determining whether or not such local rate is unreasonable or unjust. Held.

And the Court held the said proposition as law applicable in this case and marked the same "Held."

266 The defendant, the Southern Railway Company requests the Court to hold the following proposition of law as applicable in this case:

13. The fact that a Railway Company charges the local shipper more for transporting property between two points on its road, than it charges when the property transported between the same points is received by a connecting carrier and is carried under a joint tariff established by two connecting carriers, is insufficient evidence to es-

tablish the charge of an undue preference or unjust discrimination under the Act to regulate Commerce. Held.

And the Court held the said proposition as law applicable in this case and marked the same "Held."

The defendant, the Southern Railway Company requests the Court to hold the following proposition of law as applicable in this case:

14. The fact that a railway company charges a local shipper more for transporting property between two points on its road, than it charges when the property transported between the same two points is received by a connecting carrier and is carried under a joint tariff established by two connecting carriers, is insufficient evidence to establish the charge that a rate is unreasonable and unjust under Section one (1) of the Act to regulate Commerce. Held.

And the Court held the said proposition as law applicable in this case and marked the same "Held."

And the defendant, the Southern Railway Company requests the Court to hold the following proposition of law as applicable in this case:

15. On a trial in a Circuit Court of the United States to enforce an order of the Interstate Commerce Commission requiring a railroad Company or railroad companies to make reparation to a shipper on account of unjust discrimination against him, or on account of charging him unjust or unreasonable rates, the trial in the Circuit Court is *de novo* and the burden is upon the petitioner to establish the charge made before the Interstate Commerce Commission. Held.

And the Court held the said proposition as law applicable to this case and marked the same "Held."

The Defendant, the Southern Railway Company requests the Court to hold the following proposition of law as applicable in this case:

16. A carrier is entitled to a fair return upon a fair value
267 of its property engaged in the public service. It is incompetent and contrary to the XIV Amendment to the Constitution of the United States to require a carrier to perform any service, at or below cost. Held.

And the Court held the said proposition as law applicable to this case, and marked the same "Held."

The Defendant, the Southern Railway Company requests the Court to hold the following proposition of law as applicable in this case:

17. Where the reasonableness of a rate is involved in a suit of this character the opinions of expert traffic men given in evidence that such rate is reasonable, and the evidence showing that such rate is made by competition between carriers, between markets and between products, and the evidence showing that markets grow and prosper under such rates, and the evidence comparing the rate attacked with rates in other sections of the country where the hauls are for similar distances and the circumstances and conditions are similar, is proper evidence to be considered in determining the reasonableness of the rate in question and cannot be disregarded. Held.

And the Court held the said proposition as law applicable in this case and marked the same "Held."

The defendant, the Southern Railway Company requests the Court to hold the following proposition of law as applicable in this case:

18. In determining the reasonableness and justness or unreasonableness or unjustness of a rate the shipper is only concerned in the total charge made as to whether or not the charge as a whole is reasonable and just. He is not concerned in the various items making up the entire charge and cannot inquire into the reasonableness or unreasonableness of an item or items making up the entire charge.

But the Court refused to hold the said proposition as submitted as law applicable to this case but of its own motion modified the same so as to read as follows:

In determining the reasonableness and justness or unreasonableness and unjustness of a rate the shipper is only concerned in the total charge made and as to whether or not the charge as a whole is reasonable and just. He is not concerned in the various items making up the entire charge and cannot alone and independently inquire into the reasonableness or unreasonableness of an item or items making up the entire charge.

268 And held the same as modified as law applicable to this case, and as so modified marked the same as "Held."

To which action of the Court in so modifying the said proposition and in so refusing to hold the said proposition as law as submitted as aforesaid, the defendant, by its counsel then and there excepted, for the following reasons:

Because in determining the reasonableness and justness or unreasonableness and unjustness of a rate, the shipper is only concerned in the total charge made, and as to whether or not the charge as a whole is reasonable and just. He is not concerned in the various items making up the entire charge and cannot inquire into the reasonableness or unreasonableness of an item or items making up the entire charge.

Because the said proposition as submitted is material to the issues involved in this case, and because the proposition of law as modified by the Court unduly broadens the scope of the inquiry that a shipper may make into the reasonableness or unreasonableness of an item or items making up the entire charge.

The defendant, the Southern Railway Company requests the Court to hold the following proposition of law as applicable in this case:

19. St. Louis Hay and Grain Company in its Petition filed before the Interstate Commerce Commission in this case alleges that the reconsigning rate on hay from East St. Louis to Southeastern points in unreasonable and unjust.

This allegation was denied by defendant Southern Railway Company in its answer filed before the Interstate Commerce Commission.

This issue of reasonableness is again made and raised by the pleadings in this Court.

On this issue the only question is the reasonableness of the entire charge to the party who is charged.

It is not competent for St. Louis Hay and Grain Company to dissect the accounts of Southern Railway Company, allow this item, disallow that and manipulate the accounts of the railroad in its own way.

The reasonableness of the total charge on reconsigned hay from East St. Louis to Southeastern points is the sole question open on this issue, and such items as the alleged extra cost, charge of expense of 2 cents per hundred pounds for transfer or reconsigning hay at East St. Louis, or such items as the divisions of the total
269 through rate by and between the several carriers forming the through joint line from East St. Louis to Southeastern points or such items as one cent bridge toll at Ohio River crossing, are in no wise material to the issue of the reasonableness of the total charge to the shipper for the total service of the transportation of hay reconsigned from East St. Louis to Southeastern points. It is not competent for the shipper to dissect and separate the several services of switching, transferring, side tracking, coupling and uncoupling cars, breaking up cuts of cars, making up trains, ferrying or bridging rivers etc., at various junctions and other points on the through route. These items or similar items cannot be segregated from the whole by the shipper and in no wise concern him the only question open to him being the reasonableness of the total rate for the entire service rendered him. Refused.

But the Court refused to hold the above and foregoing proposition as law applicable to this case, to which action of the Court in refusing to hold said proposition of law as applicable in this case, the defendant by its counsel then and there excepted, for the following reasons:

Because said proposition of law is involved in this suit. The evidence shows that the complainant the St. Louis Hay and Grain Company has segregated the division of the total through rate on reconsigned hay from East St. Louis to Southeastern points and attempted to confine the inquiry to the reasonableness of that portion of the through rate alone, testing same entirely by the reference to the cost of switching, transferring and delay of cars at East St. Louis and not taking into consideration the cost and expense of the service at other junction points or other places on the through line from East St. Louis to points in the Southeast, and not taking into consideration the cost and expense and value of the entire service for the entire haul.

And thereupon on the 25th day of June A. D. 1906, the Court filed its written findings of fact order and judgment in this cause, which said written findings of fact, orders and judgment as so found ordered and adjudged by the Court, is in words and figures, as follows, to-wit:

270 *Findings of Fact.*

ST. LOUIS HAY AND GRAIN COMPANY
vs.
SOUTHERN RAILWAY COMPANY.

And now again come the parties to this suit, the plaintiff and defendant, by their respective attorneys, and the Court having heretofore heard the arguments of counsel for the respective parties, and taken the cause under advisement, and the Court now being fully advised in the premises on consideration thereof doth find that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its report and Opinion, in substance, the following facts:

1. Large quantities of hay produced in territory east, north and west of East St. Louis are consumed in southeastern territory and much of it is carried through the East St. Louis Gateway and passes over defendant's lines of Railway from East St. Louis to points south of the Ohio River. With the exception of the Illinois Central, defendant's lines terminate in East St. Louis, and generally also, lines of railway over which the hay is carried from said producing points to East St. Louis terminate at that point.

2. For the transportation from East St. Louis to said southeastern points, defendants apply a proportional rate which is 2 cents per hundred pounds greater than the rate to said Southeastern points from the Ohio River, if the hay is not unloaded at a warehouse in East St. Louis regardless of whether or not the hay is shipped locally to East St. Louis or through billed from the point of origin to the points of final destination, and regardless of provisions in their tariffs concerning through billing, but if the hay is unloaded at a warehouse in East St. Louis defendants exact for the transportation thereof from East St. Louis to said southeastern points, a rate which is 4c. per hundred pounds greater than the rate from the Ohio River to said southeastern points.

3. Complainant operates two warehouses at East St. Louis and most of the hay it handles it purchases on the track at East St. Louis unloads, inspects, assorts and reloads at said warehouses, and sells at southeastern points, in competition with other hay dealers who do not unload the hay at East St. Louis. In such competition com-

271 plainant is therefore prejudiced to the extent of two cents per hundred pounds by defendant's method of applying rates of transportation as aforesaid. Defendants claim that this 2 cents difference in rates is justified by difference in cost to them between the two kinds of transportation services they are called upon to perform.

4. At East St. Louis transfers of loaded cars from the northern to the southern lines and transfers of empty cars from the southern to the northern lines is generally made by a connecting railroad company, and the charge made by that Company for such service is $4.00 per car when the hay is unloaded as aforesaid, but only $2.00 per

car when the hay is not so unloaded, and in each instance this charge is paid by the carrier which hauls the hay south from East St. Louis.

5. When the hay is unloaded as aforesaid an empty car must be furnished for the shipment by the carrier which hauls the hay south from East St. Louis, and the service of so furnishing is fairly worth from 40 to 60 cents per car.

6. The car is in use from 2 to 3 days longer when the hay is unloaded as aforesaid than when it is not so unloaded, and a fair compensation for such use is 20 cents per day.

7. When hay is unloaded and reloaded at warehouses as aforesaid, the time consumed in doing the work averages from 6 to 8 hours, but the expense of such unloading and reloading is borne entirely by the shipper.

8. Shipments of hay to which the rate of two cents per 100 pounds above the rate from the Ohio River is applied as aforesaid, and which are not unloaded at East St. Louis warehouses are frequently transferred from one car to another in the Railroad Yards at East St. Louis either because cars in which the hay is shipped to East St. Louis from the north are out of repair, or because the northern lines are not willing to allow their cars to go south from East St. Louis. The expense of such transfer is from $1.25 to $1.50 per car, and this expense is borne entirely by the carrier which hauls the hay south from East St. Louis.

9. The transfer charge of $4.00 per car above mentioned was formerly $3.00 per car, and the transfer charge of $2.00 per car above mentioned was formerly $1.50 per car.

10. The weight of hay in cars shipped as aforesaid from East St. Louis to southeastern points is from 1,000 to 2,000 pounds greater than when the hay is reloaded at East St. Louis warehouses than when it is not so reloaded. This is an advantage in favor of reconsigned hay.

11. Cars from the north, after being unloaded at the ware-
272 houses as aforesaid, are frequently reloaded for the south, thus avoiding expense to the Southern line of placing an empty car and substracting perhaps a day from the additional time of the car service.

12. That taking every thing into account the average additional expense to southern lines in case of reconsigned hay will not exceed that of direct through shipments by more than $2.00 to $2.50 per car, which is equivalent on the average loading of hay to about 1 cent per hundred pounds.

13. Much of the hay which actually passes through East St. Louis might reach its southern destination via other gateways. Hay grown in different sections also competes via these other gateways in the south with that which does or might pass through East St. Louis. These Gateways are Cincinnati, Louisville, Evansville, Cairo, Memphis, Nashville and perhaps others. The testimony showed that at all these points hay could be stopped off, unloaded and treated as the complainant handles its hay at East St. Louis, without the imposition of any charge in addition to the through rate. The testimony

showed that these markets all competed with East St. Louis, but the force of that competition did not appear.

14. The complainant actually paid to the Southern Railway Company on reconsigned shipments of hay, at the rate of 2c per 100 pounds, the difference between the reconsigning rate and the rate on hay not reconsigned, the sum of $3,144.17.

And from all the evidence heard and adduced on the trial of this cause in this Court, the Court finds that the said finding of fact, by the said Interstate Commerce Commission are supported and justified by the said evidence, and it is ordered that the said findings of fact as above recited and set out be and the same are adopted as the special findings of fact of the Court and that the same be set out in the records of this Court accordingly.

Judgment.

It is therefore considered, ordered and adjudged by the court that the plaintiff herein have and recover of the defendant herein, the sum of One Thousand Six Hundred Fifty Nine and 41/100 ($1659.41) Dollars, the same being the amount of reparation awarded by the said Commission to the plaintiff against the defendant with five per cent. interest from the date of said award, and it is further ordered and adjudged by the Court that the plaintiff have and recover of the defendant its costs herein to be taxed in-
273 cluding a reasonable attorney's fee to be hereafter fixed, and that execution issue against the defendant for the amount of the said judgment and the said costs.

It is further ordered that the defendant have sixty days from this date in which to present a bill of exceptions if it shall be so advised.

Enter.

F. M. W.

Exceptions to Findings of Fact.

To which action and decision of the Court in finding that on the hearing of this cause before the Interstate Commerce Commission the said Commission found in its Report and Opinion in substance the facts stated in the finding No. 1 above, and in finding from all the evidence heard and adduced on the trial of this cause in this Court that said finding of fact by the Interstate Commerce Commission is supported and justified by the said evidence and in ordering that said finding of fact *he* adopted as a special finding of fact by this Court, the defendant by its counsel, then and there excepted, because said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not, in its Report and Opinion, find said facts in substance; because there was no evidence introduced on the trial of this cause to support the same.

To which action and decision of the Court in finding that on the hearing of this cause before the Interstate Commerce Commission the said Commission found in its Report and Opinion in substance

the facts stated in the finding No. 2 above, and in finding from all the evidence heard and adduced on the trial of this cause in this Court that said finding of facts by the Interstate Commerce Commission is supported and justified by the said evidence, and in ordering that said finding of fact be adopted as a special finding of fact of this Court, the defendant, by its Counsel, then and there excepted.

Because said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not in its Report and Opinion find said facts in substance; because there was no evidence introduced on the trial of this cause to support the same.

To which action and decision of the Court in finding that on the hearing of this cause before the Interstate Commerce Commission the said Commission found in its Report and Opinion in substance the facts stated in the finding No. 3 above, and in finding from all the evidence heard and adduced on the trial of this cause in
274 this Court that said finding of fact by the Interstate Commerce Commission is supported and justified by the said evidence and in ordering that said finding of fact be adopted as a special finding of fact of this Court, the defendant, by its counsel, then and there excepted, because said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not, in its Report and Opinion find said facts in substance; because there was no evidence introduced on the trial of this cause, to support the same.

To which action and decision of the Court in finding that on the hearing of this cause before the Interstate Commerce Commission the said Commission found in its Report and Opinion in substance the facts stated in the finding No. 4 above, and in finding from all the evidence heard and adduced on the trial of this cause in this Court that said finding of fact by the Interstate Commerce Commission is supported and justified by the said evidence and in ordering that said finding of fact be adopted as a special finding of fact of this Court, the defendant by its counsel, then and there excepted, because said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not, in its Report and Opinion, find said facts in substance; because there was no evidence introduced on the trial of this cause to support the same.

To which action and decision of the Court in finding that on the hearing of this cause before the Interstate Commerce Commission the said Commission found in its Report and Opinion in substance the facts stated in the finding No. 5 above, and in finding from all the evidence heard and adduced on the trial of this cause in this Court that said finding of fact by the Interstate Commerce Commission is supported and justified by the said evidence, and in ordering that said finding of fact be adopted as a special finding of fact of this Court, the defendant, by its counsel then and there excepted, because said finding of fact is not material to the issues in this case; because the Interstate Commerce Commission did not, in its Report and Opinion, find said facts in substance; because there was no evidence introduced on the trial of this cause, to support the same.

To which action and decision of the Court in finding that on the hearing of this cause before the Interstate Commerce Commission the said Commission found in its Report and Opinion in
275 substance the facts stated in the finding No. 6 above, and in finding from all the evidence heard and adduced on the trial of this cause in this Court that said finding of fact by the Interstate Commerce Commission is supported and justified by the said evidence, and in ordering that said finding of fact be adopted as a special finding of fact of this Court, the defendant, by its counsel, then and there excepted, because the said finding of fact is not material to the issues involved in this cause; because the Interstate Commerce Commission did not in its Report and Opinion find said facts in substance; because there was no evidence introduced on the trial of this cause to support the same.

To which action and decision of the Court in finding that on the hearing of this cause before the Interstate Commerce Commission the said Commission found in its Report and Opinion in substance the facts stated in the finding No. 7 above, and in finding from all the evidence heard and adduced on the trial of this cause in this Court that said finding of facts by the Interstate Commerce Commission is supported and justified by the said evidence, and in ordering that said finding of fact be adopted as a special finding of fact of this Court, the defendant, by its counsel, then and there excepted, because the said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not, in its Report and Opinion, find said facts in substance; because there was no evidence introduced on the trial of this cause to support the same.

To which action and decision of the Court in finding that on the hearing of this cause before the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the facts stated in the finding No. 8 above, and in finding from all the evidence heard and adduced on the trial of this cause in this Court that said finding of facts by the Interstate Commerce Commission is supported and justified by the said evidence, and in ordering that said finding of fact be adopted as a special finding of fact of this Court, the defendant, by its counsel, then and there excepted, because the said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not in its Report and Opinion find said facts in substance; because there was no evidence introduced on the trial of this case to support the same.

To which action and decision of the Court in finding that
276 on the hearing of this cause before the Interstate Commerce Commission the said Commission found in its Report and Opinion in substance the facts stated in the finding No. 9 above, and in finding from all the evidence heard and adduced on the trial of this cause in this Court that said finding of fact by the Interstate Commerce Commission is supported and justified by the said evidence, and in ordering that said finding of fact be adopted as a special finding of fact of this Court, the defendant, by its counsel, then and there excepted, because said finding of fact is not material to the

issues involved in this case; because the Interstate Commerce Commission did not, in its Report and Opinion find said facts in substance; because there was no evidence introduced on the trial of this cause to support the same.

To which action and decision of the Court in finding that on the hearing of this case before the Interstate Commerce Commission the said Commission found in its Report and Opinion in substance the facts stated in the finding No. 10 above and in finding from all the evidence heard and adduced on the trial of this cause in this Court that said finding of facts by the Interstate Commerce Commission is supported and justified by the said evidence, and in ordering that said finding of fact be adopted as a special finding of fact of this Court, the defendant, by its counsel, then and there excepted, because said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not, in its Report and Opinion, find said facts in substance; because there was no evidence introduced on the trial of this cause to support the same.

To which action and decision of the Court, in finding that on the hearing of this cause before the Interstate Commerce Commission the said Commission found in its Report and Opinion in substance the facts stated in the finding No. 11 above, and in finding from all the evidence heard and adduced on the trial of this cause in this Court that said finding of facts by the Interstate Commerce Commission is supported and justified by the said evidence, and in ordering that said finding of fact be adopted as a special finding of fact of this Court, the defendant, by its counsel then and there excepted, because said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not, in its Report and Opinion, find said facts in substance; because there was no evidence introduced on the trial of this case to support the same.

277 To which action and decision of the Court in finding that, on the hearing of this cause before the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the facts stated in the finding No. 12 above, and in finding from all the evidence heard and adduced on the trial of this cause in this Court that said finding of facts by the Interstate Commerce Commission is supported and justified by the said evidence, and in ordering that said finding of fact be adopted as a special finding of fact of this Court, the defendant, by its counsel, then and there excepted, because said finding of fact is not material to the issues involved in this cause; because the Interstate Commerce Commission did not, in its Report and Opinion, find said facts in substance; because there was no evidence introduced on the trial of this cause to support the same.

To which action and decision of the Court, in finding that, on the hearing of this cause before the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the facts stated in the finding No. 13 above, and in finding from all the evidence heard and adduced on the trial of this cause in this Court that said finding of facts by the Interstate Commerce Commis-

sion is supported and justified by the said evidence, and in ordering that said finding of fact be adopted as a special finding of fact of this Court, the defendant, by its counsel, then and there excepted, because the said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not, in its Report and Opinion, find said facts in substance; because there was no evidence introduced on the trial of this cause to support the same.

To which action and decision of the Court in finding that, on the hearing of this cause before the Interstate Commerce Commission the said Commission found in its Report and Opinion in substance the facts stated in the finding No. 14 above, and in finding from all the evidence heard and adduced on the trial of this cause in this Court that said finding of facts by the Interstate Commerce Commission is supported and justified by the said evidence, and in ordering that said finding of fact be adopted as a special finding of fact of this Court, the defendant, by its Counsel, then and there excepted, because said finding of fact is not material to the issues involved in this cause; because the Interstate Commerce Commission did not, in its Report and Opinion, find said facts in sub-
278 stance; because there is no evidence introduced on the trial of this cause, to support the same.

To which action of the Court, in rendering judgment in favor of the Petitioner and against the defendant herein, for the sum of Sixteen Hundred and Fifty-nine Dollars and Forty-One Cents ($1659.-41) and costs including attorney fee, as aforesaid, and in ordering execution against the defendant for the amount of said judgment and costs, the defendant, by its Counsel, then and there excepted.

Allowance of Attorney's Fees.

And now on this the 25th day of June A. D. 1906, the same being one of the Judicial days of the present term of this Court, come the parties to this cause, and on motion of the Petitioner the Court allows the Petitioner an Attorney fee herein, in the sum of Three Hundred Fifty ($350.00) Dollars, to be collected as part of the costs in this cause, to which action and decision of the Court in allowing said Attorney fee and ordering same to be collected as part of the costs herein, the defendant, by its Counsel, then and there excepted, because,

Exception to Allowance of Attorney's Fees.

First. The said order and decision of the Court in allowing said attorney fee and ordering that the same be collected as part of the costs in this case, is contrary to the provisions of the fourteenth amendment to the Constitution of the United States, in this,

That it denies to the defendant herein the equal protection of the law.

Second. That it abridges the privileges and immunities of the defendant, being a citizen of the United States.

Third. Because the provisions of the Act of Congress to regulate

Commerce which allows an attorney fee to the Petitioner in a proceeding of this character is contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States, and is unconstitutional and void.

279 *Motion for New Trial.*

UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

In the Circuit Court of the United States for the Eastern District of Illinois, to the May Term, A. D. 1906.

ST. LOUIS HAY & GRAIN COMPANY, Petitioner,
vs.
SOUTHERN RAILWAY COMPANY, Defendant.

Suit to Collect Reparation Fixed by Order of the Interstate Commerce Commission.

And now on this 25th day of June A. D. 1906, comes the defendant, Southern Railway Company, by Claudian B. Northrop and Edward C. Kramer, its attorneys, and moves the Court to set aside the judgment of the Court rendered herein, and the propositions of law found herein, and made and entered by the Court in this suit, and to grant a new trial herein and for grounds of said motion shows unto the Court the following:

1. The Court erred in admitting improper, irrelevant, immaterial and incompetent evidence on the trial of said cause over the objections of defendant.

2. The Court erred in refusing to admit proper, relevant, material and competent evidence offered by defendant on the trial of said suit

3. The Court erred in refusing the 4th, 7th, 9th and 19th propositions of law submitted by defendant, and each of them.

4. The Court erred in refusing the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th and 21st special findings of fact submitted by defendant, and each of them.

5. The Court erred in holding as law the propositions of law submitted by the petitioner, and each of them.

6. The Court erred in finding the special findings of fact submitted by petitioner, and each of them.

7. The general and special findings of fact found by the
280 Court*s* are contrary to and not supported by the evidence in the case.

8. The judgment and propositions of law held by the Court are not supported by the law in the case.

9. Because the Court erred in refusing defendant's motion to find the issues in this suit in favor of the defendant and to render judgment in favor of the defendant.

10. Because the Court refused defendant's motion to remand the case back to the Interstate Commerce Commission.

11. And for other good and sufficient reasons.

CLAUDIAN B. NORTHROP &
EDW. C. KRAMER,
Attorneys for Defendant.

But the Court overruled said motion and refused to grant the same to which decision of the Court in overruling said motion and refusing to grant the same the defendant by its counsel then and there excepted for the reasons stated in said motion.

PETITIONER'S EXHIBITS.

* * * * * * *

P'ff's Ex. #2.

Plaintiff's Exhibit 2—Rules and Regulations.

I. C. C. No. C-428.
(Cancels Circular No. C-95.)
Southern Railway Company,
St. Louis-Louisville Lines
Venice & Carondelet Railway.

Freight Traffic Department.

Switching Rates at East St. Louis and Venice, Ill
Effective Apr. 1, 1904.

Rules and Regulations.

*a*1. The rates named herein apply on loaded cars only, and will include handling of empty cars to or from connecting line or industry, unless otherwise noted.

*a*2. Empty freight cars for repairs will take new equipment rates one way, unless otherwise noted.

281 *a*3. No loaded car will be received from connecting line or shipper, unless accompanied by regular Way-Bill or Pray Ticket, showing consignee and final destination.

*a*4. All cars are subject to rules of the Central Car Service Association.

*a*5. A charge of $2.00 extra will be assessed on each car reconsigned from Southern Ry.-V. & C. tracks, except on coal and ice, which will be $1.00 per car.

*a*6. No car billed "Shippers Order—Notify" for delivery on Southern Ry.-V. & C. tracks will be received.

*a*7. Southern Ry.-V. & C. will not accept charges on cars from connecting line, handled for switching revenue only.

*a*8. The National Stock Yards trackage of $1.00 per car on dead freight to and from industries located on their tracks, must be added to switching rate.

*a*9. Long lumber and other articles which require two or more cars for its transportation shall be charged at no less than the minimum weight at the established rate for each car used.

*a*10. Southern Ry.-V. & C. will not assume liability for loss or damage to cars or contents beyond their tracks.

*a*11. All orders for empty cars should be placed with agents of the Southern Ry.-V. & C. at Broadway Station, East St. Louis.

*a*12. Southern Railway as receiving line will absorb switching from connections at East St. Louis, on all through business which does not have origin in East St. Louis, except that on Grain consigned to mills or Industries at Belleville, New Baden, Germantown, Mt. Vernon, Mt. Carmel, Princeton, Kings, Dale, Grand View, Evansville, etc., under milling in transit arrangements, the switching must be in addition to the rate.

* * * * * * *

Grain or Hay Via Elevators and Warehouses for Transfer or Otherwise.

Grain or Hay between V. & C.-S. Ry. connections, and elevators or Warehouses located on V. & C.-S. Ry. tracks, for transfer or otherwise.

½c. per cwt. minimum $1.50 per car into Elevators or Warehouses.

½c. per cwt. minimum $1.50 per car out of Elevators or Warehouses.

282 No charge into or out of Elevators or Warehouses on business moving via I. C. T. Co. The Miss. River Transfer covers fully.

No charge out of Elevators or Warehouses on business moving via Sou. Ry. (St. L. Div.)

PL'FF'S EX. #3.

Plaintiff's Exhibit 3—*Letter of May* 17, 1906.

ST. LOUIS, *May* 17*th*, 1906.

221 A.

Judge E. C. Kramer, Division Counsel, East St. Louis, Ill.

DEAR SIR: Complaint of the St. Louis Hay & Grain Co.

During the course of my testimony Mr. Farrell, attorney for the petitioner, requested me to furnish a statement showing the amount paid by the Southern Railway for the fiscal year ending June 30th, 1905, to foreign lines for use of foreign line cars on basis of per diem rental of 20 cents per day and also the amount received by the Southern Railway for use of Southern Railway cars by foreign lines on the per diem basis of 20 cents per day. At the same time he handed me the attached memorandum, which he states contains extracts from the Annual Report of the Southern Railway Company to the Interstate Commerce Commission for the year ending June 30th, 1905.

Not having these complete figures in St. Louis I telegraphed the

Comptroller on May 15th as per attached telegram, receiving his first reply dated 11.15 A. M., May 16th, and his second reply dated 5.10 P. M. May 16th. The original telegraphic correspondence is enclosed.

It is proper to say that the figures shown in the memorandum handed to me by Mr. Farrell were compiled in accordance with the rules laid down by the Interstate Commerce Commission, and the gross amount charged to operating expenses (namely, $614,281.64) is the same figure as shown in the Southern Railway Annual Report for 1905, page 33, under the item "Hire of Equipment—Balance."

I should add also that the operating report, which is furnished to the operating officers only, shows the following figures for
283 the twelve months ending June 30th, 1905, page 4:

Foreign Passenger car mileage, balance	$4,753.27
Sleeping and parlor car mileage	27,736.20
Hire of freight cars, debit	1,575,074.40
Hire of freight cars, credit	993,282.23
Hire of freight cars, balance	581,792.17

This balance as shown in the operating report includes also mileage paid for use of refrigerator cars, tank cars, etc., which items are not ordinarily separated in our operating reports. I can only assume that the difference between that figure and the figure given in Mr. Plant's telegram represents the amount paid for use of equipment on a mileage basis.

The calculation is as follows:

Hire of freight cars, balance	$581,792.17
Hire of freight cars on per diem basis, balance	451,236.99
Hire of freight cars on mileage basis	130,555.17

You will observe that this varies less than $600.00 from the figure given in the report to the Interstate Commerce Commission and which is, as per Mr. Farrell's memorandum, $131,163.18.

Yours truly,

T. C. POWELL,
Fifth Vice-President.

Copy to Mr. Northrop, with copies of enclosures.
T. C. P.

Telegram of May 16, 1906.

Postal Telegraph Company.

a 333 Ny Bu —74-D.H.— 510P.M.

WASHINGTON, D. C., *May 16th,* 1906.

T. C. Powell, Chemical Building, St. Louis, Mo.:

In further connection with your telegram in regard to per diem. The best I can do is for the year ended June 30, 1905 freight car per diem including per diem switching which is as follows: Paid to foreign lines one million four forty four naught eleven eighty received

from foreign lines nine nin-ty two seven seventy four eighty one net debit four fifty one two thirty six ninety nine.

A. H. PLANT.

284 Western Union Telegraph Company.

51.W.St.JC. 99-DH.

WASHINGTON, D. C., *May* 16, 1906.

T. C. Powell, Chemical Building, St. Louis, Mo.:

Your telegram having reference to page 77 interstate report for year ended June 30 1905

the total shown on that page is amount paid or allowed for rolling stock not the property of railroads nor consigned for use by lease which is the information asked for by the report. This is simply the amount paid for the use of cars in private lines. Have no record of figures showing hire of freight cars on strictly per diem basis. Will endeavor to separate mileage per diem figures and wire you later in the day.

A. H. PLANT.

1115a

Form 649. Rev. 10—04. T. W.

10—17—05. 8,000,000 B 69530.

Telegram.

Southern Railway Company.

Operators Are Required to White All Telegrams in Ink. Official signal, to or from, sender, receiver, and the Time Sent or Received must be endorsed on all telegrams. Telegrams for parties on trains (except those addressed to trainmen) must be enclosed in envelopes.

ST. LOUIS, *May 15th,* 1906—6.30 p. m.

A. H. Plant, Southern Ry., Washington, D. C.:

Please see page seventy seven of annual report Southern Railway to Interstate Commerce Commission year ended June thirteenth nineteen five, and says of figures of one thirty one one sixty three dollars eighteen cents include all payments made for use of freight cars on mileage basis, and do these figures include only payments for use of freight cars? In other words, refer to our own classification C T eighty two and wire debit, credit and balance for hire of freight cars on strictly per diem basis.

T. C. POWELL.

WU DH 11603.
Southern Ry.
V.

285 *Extracts from the Annual Report of the Southern Railway Company to Interstate Commerce Commission for the year ending June 30, 1905.*

CAR MILEAGE.

Paid or allowed for rolling stock not the property of railroads nor consigned by use by lease (page 77).....	$131,163.18
Charged to operating expenses, car per diem and mileage—balance, (page 43).....	614,281.64
Difference.....	$483,118.46

DEFENDANT'S EXHIBITS.

DEF'T EX. # 1.

Defendant's Exhibit 1—*B. & O. Special Freight Tariff.*

I. C. C. No. 4745, cancels I. C. C. No. 4254.

No. H 2153, cancels No. H 1978.

The Baltimore & Ohio Southwestern R. R. Co.
Special Freight Tariff
Naming Rates On
Grain, Grain Products and Hay,
In Carloads (except as noted),
Minimum Weight as Per Southern Classification,
From Stations on the
Baltimore & Ohio Southwestern Railroad
(West of Aurora, Ind.),
To Points In
Southeastern and Carolina Territories.

* * * * *

To make through rates on Grain, Grain Products and Hay, in carloads, from B. & O. S-W. stations west of Arcola, Ind., to points in Southeastern and Carolina Territories, the following differentials must be added to the current LOCAL rates from Louisville, Ky., as published in current tariffs of the L. & N. R. R., Ill. Cent. R. R., Q. & C. Route, and Southern Ry. (For the information of agents and others not in possession of these tariffs, rates from Louisville to some of the principal points in the Southeast are republished in this item.)

Index No.	From B. & O. S-W. Stations inclusive by Index Numbers as below. (See Page 2.)	WHEN DESTINED TO POINTS IN SOUTHEASTERN TERRITORY, AND TO NASHVILLE, TENN. Cents per 100 pounds. C	D			"Cents F" Basis. F	CAROLINA TERRITORY. Cents per 100 pounds. C	D			"Cents F" Basis. F
120	Lillishore, Ind.	5	5	5	6½	10	5	5	5	6½	10
129	Cold Springs, "	6	5	5	7	10	5	5	5	7	10
and	and										
140	Moores Hill, "	5	5	5	7½	10	5	5	5	7½	10
141	Milan, "										
to	to										
143	Butlerville, "										
144	North Vernon, "	3½	3½	3½	7½	7	3½	3½	3½	7½	7
to	to										
160	Seymour, "	6	6	6	9½	13	6	6	6	9½	13
161	Lehigh, "										
to	to										
171	Mitchell, "	7	7	6	10½	14	6	6	6	10½	14
172	Georgia, "										
to	to										
183	Montgomery, "	5	5	5	7½	10	6	6	6	10½	14
184	Washington, "										
to	to										
199	Vincennes, "	6	5	5	8	10	6	6	6	11	14
200	Aitken Branch, Ill.										
to	to										
207	Lawrenceville, "	7	6	6	8	14	6	6	6	11	14
208	Bridgeport, "										
to	to										
209	Noble, "	7	7	6	8	14	9	9	8	11	18
210	Clay City, "										
and	and										
210	Flora, "	7	7	6	8	14	9	9	8	11	18
211	Shawneetown, "										
to	to	7	7	6	25	14	9	9	9	11	18
227	Fairfield, "										
228	Geff, "	7	7	6	8	14	9	9	9	11	18
to	to										
230	Hazard, "	7	7	7	8½	14	9	9	9	11½	18
231	Louis, "										
to	to										
234	Edgewood, "	7	7	7	9	14	9	9	9	12	18
235	Gilmore, "										
to	to										
248	Taylorville, "	7	7	7	10	14	9	9	9	13	18
249	Sharpe, "										
to	to										
255	Bluff Springs, "	6	7	6	10	13	9	9	9	13	18
257	Beardstown, "										
258	Browns Spur, "	7	7	5	8	714	9	9	8	11	18
to	to										
291	E. St. Louis, "										

†Hominy and Grits, in barrels, 10 cents.

†To make through rates on Classes "C" and "F" in bbls. thence carloads from Seymour, Ind., to points in Southeastern and Carolina territory, add 5 cents per 100 lbs. to the rates from Louisville, Ky., as shown on page 2, which apply on L. C. L. as well as C. L. shipments, except where otherwise noted.

‡Rates on Hay from stations Shawneetown to Fairfield, Ill., inclusive (Index No. 211 to 227) apply only via Bluford and Fairfield.

☞ It should be understood that the above figures are not the B. & O. S-W. proportions of the through rates. For divisions of through rates based on these differentials, see division sheets applying in connection with this tariff.

NOTICE.

Whenever lower rates can be made by use of established rate to Ohio River Crossings, or E. St. Louis, plus current rates beyond, such lower combination will govern in lieu of the through rates established by this tariff.

287 DEF'T EX. # 2.

Defendant's Exhibit 2—Burlington Route Joint Freight Tariff.

C. B. & Q. I. C. No. 5299
Cancels C. B. & Q. No. I. C. C. No. 4557.
Quincy Route Tariff No. 853-G Cancels 853-F.
C. B. & Q. G. F. O. No. 6548 Cancels C B & Q G. F. O 14545 of 1903.

Burlington
Route
Chicago, Burlington & Quincy Railroad
Hannibal & St. Joseph Railroad
St. Louis, Keokuk & Northwestern Railroad Company
Kansas City, St. Joseph & Council Bluffs Railroad
Chicago, Burlington and Kansas City Railroad
Keokuk & Western Railroad
Chicago, Burlington & Quincy Railway Company Lessee.
Rockpork, Langdon & Northern Railway,
Quincy, Omaha & Kansas City R. R.
Iowa & St. Louis Railroad,
Chicago, Burlington & Quincy Railroad Co. Lessee
Chicago, Rock Island & Pacific Railway,
The Minneapolis & St. Louis Railroad
—In connection with—
Illinois Central Railroad
Louisville & Nashville Railroad.
Southern Railway.
Mobile & Ohio Railroad.

Joint Freight Tariff
—on—
Grain, Grain Products and Hay Carloads

Taking Effect April 1, 1904.

* * * * *

FROM	TO	RATE	
		Grain & Grain Products Carloads Min. Wt. Provided for by Tariffs named below	Hay, Carloads Min. Weight 20,000 Lbs.
Stations in Iowa and Missouri on C. B. & Q. R. R. H. & St. J. R. R. K. C. St. J. & C. B. R. R. C. B. & K. C. R. R. K. & W. R. R. Q. O. & K. C. R. R. I. & St. L. Ry. R. I. & N. Ry., Stations on M. & St. L. R. R. (Angus, Iowa to Norman, Ia. inc)	Cairo, Ill. or Evansville, Ind. applying only on traffic destined to points in Carolina Territory.	3 cents per 100 lbs. higher than rates to East St. Louis, Ill. as named in the tariff enumerated below, amendments or subsequent issues.	3c per 100 lbs higher than rates to East St. Louis, Ill. as named in the tariffs enumerated below, amendment or subsequent issues.
All stations on C. R. I. & P. Ry. in Iowa, Minnesotta and South Dakota.	Cairo, Ill. or Evansville, Ind. applying only on traffic destined to all territory South of states of Kentucky and Virginia and east of the M. & O. except to points on I. C. R. R. in Tennessee and points on the N. C. & St. L. Ry. west of West Nashville, Tenn. and as above.	1 cent per 100 lbs. higher than rates to East St. Louis, Ill. as named in the tariff enumerated below, amendments or subsequent issues.	3c per 100 lbs. higher than rates to E. St. Louis, as named in tariffs enumerated below, amendments or subsequent issues.
	Cairo, Ill. or Evansville, In. apply only on traffic destined to points in Carolina Territory.	3 cents per 100 lbs. higher than rates to East St. Louis, Ill. as named in the tariff enumerated below amendments or subsequent issues.	
	Cairo, Ill. or Evansville, Ind. applying only on traffic destined to all territory south of states of Kentucky and Virginia and east of the M. & O. R. R. except points on I. C. R. R. in Tennessee and point on the NC&St. L. west of West Nashville, Tenn. and as above.	1 cent per 100 lbs. higher than rates to East St. Louis, Ill. as named in tariffs enumerated below, amendments or subsequent issues.	
Stations on C. R. I. & P. Ry. Burlington Ia. to Waverly, Ia. and Fairbault, Minn. Toddville, Ia. to Decorah and Postville, Ia. Clinton to Iowa City, Ia. Muscatine to Montezuma and What Cheer, Ia. Garrison to	Cairo, Ill. or Evansville applying only on traffic destined to points in Carolina Territory.		3c per 100 lbs. higher than rates to East St Louis, Ill. as named in tariffs enumerated below amendments or subsequent issues.
	Cairo, Ill. or Evansville, Ind. applying only on traffic destined to all territory south of the states of Ky. and Virginia and east of the M. & O. R.R. except to points on I. C. R. R. in Tenn. and point on the NC&St L west of West		

DEFT EX #3

Defendan
hibit 3
L. & W
Propor
Freigh

Southern Railway Company
St. Louis-Louisville Lines

G. F. O. No. C-977

Cancels GFOC 902

I. C. C. No. 265.
(Cancelling I. C. C. No. 184.)

G. F. O. No. 432.
(Cancelling G. F. O. No. 387.)

Toledo, St. Louis & Western Railroad Co.

IN CONNECTION WITH

Illinois Central R. R. Mobile & Ohio R. R. Southern Ry.

JOINT PROPORTIONAL FREIGHT TARIFF,

APPLYING ON

HAY. GRAIN AND GRAIN PRODUCTS,

(CAR LOADS)

FROM

ILLINOIS STATIONS

TO

CAIRO, ILLS.,

VIA ILLINOIS CENTRAL R. R. OR MOBILE & OHIO R. R.

EVANSVILLE, IND.,

VIA SOUTHERN R. R.

Rates apply only when shipments are routed beyond Cairo or Evansville, via the same road that handled the cars into those points.

The rates named in this tariff will apply only as proportional rates on traffic destined to Junction points in the South, east of the line of the M. & O. R. R. and on and south of the Memphis & Charleston R. R. east of Corinth, Miss., to Chattanooga, Tenn., to to Wilmington, Walhalla, Seneca, Anderson, Abbeyville, Columbia and Florence, S. C., and will not apply to Cairo, Ill., or Evansville, Ind., proper.

GOVERNED BY OFFICIAL CLASSIFICATION.

Issued at Toledo, O., May 12, 1903. Effective May 26, 1903.

T. J. COOK,
Asst. Gen'l Freight Agent,
TOLEDO, OHIO.

ED. KEANE,
Asst. Gen'l Freight Agent,
ST. LOUIS, MO.

C. D. WHITNEY,
General Traffic Manager,
TOLEDO, OHIO.

TOLEDO, ST. LOUIS & WESTERN RAILROAD.

RATES IN CENTS PER ONE HUNDRED POUNDS

FROM	TO	Grain and Grain Products (Car Loads) See List Below.	Hay (Car Loads)
Humrick ..... Ills.			
Ridge Farm ..... "			
Mortimer ..... "			
Watson ..... "	Cairo (Via Ill. Cent. R. R.) .... Ills	7	10
Metcalfe ..... "	Cairo (Via N. & O. R. R.) ..... "	7	10
Melwood ..... "	Evansville (Via Ohio. Ry.) ... Ind.	7	10
Bowman ..... "			
Brocton ..... "			
Oakland ..... Ills.			
Hardin ..... "	Cairo (Via Ill. Cent. R. R.) ..... Ills.	7	10
Bushton ..... "	Cairo (Via N. & O. R. R.) ..... Ills.	7	10
Fair Grange ..... "	Evansville (Via Ohio. Ry.) .... Ind.	7	10
Charleston ..... Ills.			
Lerna ..... "			
Trilla ..... "			
Neogs ..... "			
Trowbridge ..... "			
Kingman ..... "	Cairo (Via Ill. Cent. R. R.) ..... Ills.	7	9
Stewardson ..... "	Cairo (Via N. & O. R. R.) ..... Ills.	7	9
Mode ..... "	Evansville (Via Ohio. Ry.) ... Ind.	7	9
Fancher ..... "			
Cowden ..... "			
Herrick ..... "			
Dresser ..... "			
Ramsey ..... Ills.			
Bayle ..... "			
Bingham ..... "			
Fillmore ..... "			
Chapman ..... "			
Coffeen ..... "			
Donnellson ..... "			
Sorento ..... "	Cairo (Via Ill. Cent. R. R.) ... Ills.	7	8½
New Douglas ..... "	Cairo (Via N. & O. R. R.) .... Ills.	7	8½
Albastora ..... "	Evansville (Via Ohio. Ry.) .... Ind.	7	8½
Kaufman ..... "			
Fruit ..... "			
Edwardsville ..... "			
Glen Carbon ..... "			
Peters ..... "			

LIST OF GRAIN AND GRAIN PRODUCTS.

[illegible]

When shipped in bulk, or in bulk in barrels or sacks, or in packages when packed in boxes or barrels.

DEFT EX #4

Defendant's Exhibit 4—C. Joint Proportional Freight Tariff.

L. & A. C. F. D. NO. 10199. L. C. C. NO. 1000.

(CANCELS C. & A. C. F. D. NO. 9988.—L. C. C. NO. 1184)

THE CHICAGO & ALTON RAILWAY COMPANY

IN CONNECTION WITH

LOUISVILLE & NASHVILLE R. R.
MOBILE & OHIO RAILROAD,
SOUTHERN RAILWAY.

JOINT PROPORTIONAL FREIGHT TARIFF

APPLYING ON

HAY, CARLOADS,

MINIMUM WEIGHT 20,000 LBS.

EFFECTIVE JUNE 17, 1903.

TO CAIRO, ILL., AND EVANSVILLE, IND., FROM		IN CENTS PER 100 LBS.	TO CAIRO, ILL., AND EVANSVILLE, IND., FROM		IN CENTS PER 100 LBS.
Alton	Ill	8.	Macoupin	Ill	7.84
Alton Sunpit	"	8.70	Mason City	"	10.
Anderson	"	8.72	McLean	"	10.
Atlanta	"	10.	Middletown	"	9.66
Auburn	"	8.	Miles	"	7.69
Bennington	"	9.94	Minier	"	10.
Bighton	"	6.89	Myers	"	10.
Broadwell	"	9.06	Nahunta	"	10.
Carlinville	"	7.32	New Holland	"	9.20
Chatham	"	8.77	Niwood	"	9.10
Cisco	"	10.	Pekin	"	10.
Cook	"	9.82	Peoria	"	10.
Curtis	"	9.80	Petersburg	"	9.06
Delavan	"	10.	Palmyra	"	7.45
Elkhart	"	9.82	San Jose	"	10.
Ellis	"	9.33	Sherman	"	9.19
Fancy Prairie	"	9.28	Shipman	"	7.38
Funks Grove	"	10.	Shirley	"	10.
Girard	"	8.	Springfield	"	8.
Golden	"	6.70	Springfield jct.	"	8.91
Grais Valley	"	10.	Stanford	"	10.
Greenview	"	9.94	Thayer	"	8.44
Griggs	"	9.80	Vanwood	"	9.83
Grove	"	10.	Virden	"	8.
Harmon	"	9.94	Wayne	"	10.
Ingersoll	"	10.	Williamsville	"	9.32
Lawndale	"	10.	Winkle	"	10.
Lincoln	"	9 80	Woodside	"	8.77

The above rates will apply only on traffic destined to all points south of the States of Kentucky or Virginia, and east of the Ill. Cent. R. R., Cairo to Jackson, Tenn., and east of the Mobile & Ohio R. R., Jackson, Tenn., to Mobile, Ala.

ALL SHIPMENTS TO BE SUBJECT TO THE STORAGE AND DEMURRAGE RULES AND REGULATIONS PRESCRIBED IN L. & A. C. F. D. NO. 10199, AND L. C. C. NO. 1000, DATED MAY 5, 1903.

ARTICLES AND COMMODITIES PROTECTED FROM CHANGES ON THESE A SPECIFIED DATE FOR A SPECIFIED TIME FOR A LIMITED DISTANCE OVER THE RAILROADS OF THIS RAIL DIRECTION, THE SPECIFIED BEING ENTIRELY INCLUDED WITHIN THE LIMITED DISTANCE.

H. H. GOODWYN
GEN'L PASS. AGENT, L. & N. R. R., LOUISVILLE, KY.

HAIDEN MILLARD,
GEN'L PASS. AGENT, M. & O. R. R., ST. LOUIS, MO.

E. A. CAMPBELL,
ASST. GEN'L PASS. AGENT, SOUTHERN RY., ST. LOUIS, MO.

R. D. TOAKUM,
ASST. GEN'L PASS. AGENT, C. & A. RY., ST. LOUIS, MO.

C. J. CRIHAM,
ASST. GEN'L PASS. AGENT, C. & A. RY., PEORIA, ILL.

CHAS. A. KING,
ASST. GEN'L PASS. AGENT, C. & A. RY., CHICAGO, ILL.

FRED. A. WANN, GENERAL PASSENGER AGENT, C. & A. RY. CHICAGO, ILL.

ISSUED BY FRED. A. WANN, JUNE 12, 1903.

SAL. MISSOURI RATE TO CAIRO AND EVANSVILLE.

C. & A., G. F. D. No. 10206
(Cancelling G. F. D. N2. 9987)

The Chicago & Alton Railway Company.

In Connection With

Louisville & Nashville R. R.
Mobile & Ohio Railroad,
Southern Railway

Division Sheet for G. F. D. No. 10207

Joint Proportional Tariff

on

Hay, Carloads,

Effective June 17, 1903.

FROM Chicago & Alton Ry. Stations in Ill. To	Divisions In Cents per 100 lbs.	
	Lines South of E. St. Louis	C. & A. R
Cairo, Ill. and Evansville, Ind. on shipments destined to Southeastern territory	2	Balance

D. M. Goodwyn, G. F. A.
L. & N. R. R., Louisville, Ky.
Haiden Miller, G. F. A.
M. & O. R. R., St. Louis, Mo.
R. A. Campbell, A. G. F. A.,
Southern Rwy., St. Louis, Mo.

C. J. Chism, A. G. F. A.
C. & A. R. R., Peoria, Ill.
R. D. Yoakum, A. G. F. A.
C. & A. Ry., St, Louis, Mo.
Chas. A. King, A. G. F. A.
C. & A. Ry., Chicago, Ill.

Fred A. Wann, General Freight Agent, C. & A. Ry., Chicago, Ill.

Div. Sheet on Hay, from C. & A. Ill. Sta. to Cairo and Evansville.

DEFT EX #5

I. C. C. No. 1272, canceling I. C. C. 854. 289.

VANDALIA RAILROAD COMPANY.

JOINT FREIGHT TARIFF No. 2596,

(Canceling J. F. T. No. 2289.)

—IN CONNECTION WITH—

EVANSVILLE & TERRE HAUTE R. R.
ILLINOIS CENTRAL R. R.
MOBILE & OHIO R. R.
SOUTHERN R. R.
LOUISVILLE & NASHVILLE R. R.

—ON—

HAY, C. L.

Minimum Weight 20,000 Pounds.

—FROM—

VANDALIA R. R. IN ILLINOIS

—TO—

EVANSVILLE, IND., AND CAIRO, ILL.

When Destined to Southeastern Points.

ISSUED JULY 8, 1905. **EFFECTIVE JULY 20, 1905.**

Under this Tariff when freight is to be loaded by consignor or unloaded by consignee, one dollar ($1.00) per car per day or fraction thereof for delay beyond 48 hours in loading or unloading will be added to the rates named herein and constitute a part of the total charges to be collected by the carrier on the property; except, however, when in conflict with Car Service Association or local regulations at shipping point or destination, in which case such Car Service Association or local regulations shall prevail.

H. R. GRISWOLD,
Division Freight Agent.
ST. LOUIS, MO.

WM. HODGDON,
General Freight Agent.
ST. LOUIS, MO.

HAY, C. L.

Pressed in Bales, O. R. Fire and Water, Minimum Weight 20,000 Pounds.

—TO—

EVANSVILLE, IND., and CAIRO, ILL.,

WHEN FOR SOUTHEASTERN POINTS.

RATE IN CENTS PER 100 POUNDS.

FROM	RATE	FROM	RATE	FROM	RATE
ST. LOUIS DIVISION.		Jewett		Centerville	
East St. Louis		Evening		Arthur	
*Illinois		*Bolivar		*Pattonville	
*Bellefontaine		*Perry Park		Williamsburg	
*Cemetery		Carey		Lovington	
Collinsville		*Oak Leaf		*Ullrich	
*Caseyville		Martinsville	9	Lake City	9½
*Fayetteon		*Hunter		*Prairie Hall	
Troy		*Adamsauer		Harvey City	
St. Jacob		Marshall		Mt. Zion	
Highland		Marshall Crossing		*Turpin	
Ferron		*Griffith		*Sullins	
Pocahontas		*McKean		Decatur	
*Smithsfield		*Pendleton		Decatur Junction	
Greenville		PEORIA DIVISION.		Niona	
Smithboro	9	*Farrell		Farrell	
Mulberry Grove		*Hallock		Kinney	
Hagarstown		*Hartel	9	Midland City	
Versailles		*Hanley		*Tabor	
*Mud City		Pauls		Waynesville	
Brownstown		*Katz		Ashmore	
*Avena		Kaskaskia		Mt. Joy	10
St. Elmo		Dorsey		Ashmore	
Altamont		Locust		*Custer	
Dexter		Oakland	9½	Hinder	
*Funkhouser		Middletown		*Tannehill	
Kingston		Kemp		*Dowling	
Tippecanoe		*Pierce		Hickory	
Montrose		Arcola		Allantown	
*Windsor				Morton	
				Pamdale	
				Peoria	

*No Agent. Prepaid Station. †Less than carloads only. ‡Carloads only.

295 DEFT EXHIBIT # 6

Defendant's Exhibit 6—C. C. C. & St. L. Freight Tariffs.

Supplement No. 11 to I. C. C. No. 1422 (Cancels Supplement No. 10)
The Cleveland Cincinnati Chicago and St. Louis Railway Company
Peoria & Eastern Ry., Dayton & Union R. R.,
Cincinnati Northern Railroad
Freight Traffic Department
Tariff Bureau
In Connection with
Illinois Central Railroad — Louisville & Nashville Railroad
Mobile & Ohio Railroad — Southern Railway
Supplement No. 13 to Joint Freight Tariff No. X 1450
(Cancels Supplement No. 12)
Effective July 13 1903 on Hay, Carloads
Issued July 9 1903

From	To	Rate	
Pana to Bethalto, Ill. inclusive	Cairo Ill.	9c	Care of I C or M & O Railways
	Evansville Ind.	9	Care of L & N R R or Southern Railway
Bathalto to Vermillion Ills. inclusive	to Carmi Ill.	8	Care Carmi & L & N RR
Danville to Carrier Mill Ills. inclusive	L & N RR to Evansville	1	
	to Evansville	9	
Vermillion Ills	Fontanet Ind.	6	Min. Wt. 20,000 lbs

Rates in Cents per 100 Pounds

Effective July 13, 1903, on carload shipments of hay forwarded from points in the State of Illinois to South-eastern territory, the rates charged from Illinois points of origin to the Ohio and Mississippi River gateways will be subject to minimum carload weights as provided by current Southern Classification to apply on Hay (C F A 4324)

No claim will be entertained on traffic moving to Evansville, Ind., under this tariff for the purpose of equalizing the Cairo combination.

Above rates apply on shipments destined to points south of the States of Kentucky and Virginia and East of the Illinois Central RR Cairo to Jackson, Tenn. and East of the M & O RR, Jackson to Mobile, Ala.

Rates shown in original tariff to Cairo, Ills. on shipments destined to beyond, from Cairo Division Stations Oliver to Duncanville, Ills., inclusive are hereby cancelled and withdrawn.

For rates see Freight Tariff No. X 2570.

Issued by

G. H. Ingalls
GFA CCC&StL Ry System
Cincinnati Ohio

Walter Nichols
DFA CCC&StL Ry
St. Louis Mo

C. J. Brister
AGFA CCC&StL Ry System
Cincinnati, Ohio.

R., 23344

15—104

296 Supplement No. 8 to I. C. C. No. 1422 (Cancels Supplement No. 7.)

The Cleveland Cincinnati Chicago and St. Louis Railway Company
Peoria & Eastern Ry.
Dayton & Union R. R.
Cincinnati Northern Railroad

Freight Traffic Department.
Tariff Bureau

In connection with
Illinois Central RR. Mobile & Ohio Railroad.
Louisville & Nashville R. R.

Supplement No. 10. to Joint Freight Tariff No. 1450
Cancels Supplement No. 8.

Issued July 18, 1902. Effective July 23, 1902.

On
Hay Carloads

From	To	Rate	
Pana to Bethalto Ill. incl. to apply only on business destined to points south of the States of Kentucky and Virginia and east of the line of the M&ORR	Cairo Ill.	9c	Care I. C. or M. & O. Rys.
	Evansville, Ind.	9	Care L & N R R
Bethalto to Vermillion Ills inclusive	Carmi Ill.	8	Via Carmi & L&NRR
Danville to Carrier Mills Ills inclusive	To Evansville Ind. When destined for south-east	1	
		9	
Vermillion Ills		6	Min. Wt. 20,000 lbs.

Rates in Cents Per 100 Pounds.

No claim will be entertained on traffic moving to Evansville, Ind. under this tariff for the purpose of equalizing the Cairo combination

Rates shown in original tariff and supplements apply only on shipments destined beyond.

Rates shown in original tariff to Cairo, Ills. on shipments destined beyond, from Cairo Division Stations Oliver to Duncanville, Ills. inclusive are hereby cancelled and withdrawn.

For rates see Freight Tariff No. X 2570

Issued by

Edward F. Cost
FTM CCC&StL Ry System
Cincinnati Ohio
R. 23344

Walter Nichols
DFA CCC&StL Ry
St Louis Mo.

C. J. Brister
AGFA CCC&StL Ry System
Cincinnati Ohio

297 I C C No. 1422 (Cancels I C C Nos 887 and 902)

The Cleveland Cincinnati Chicago and St Louis Railway Company
Peoria & Eastern Ry. and Dayton and Union R. R.
Freight Traffic Department
Tariff Bureau

Joint Freight Tariff No. X1450
Cancels Nos. X1881 and 1887

Issued May 9th, 1900. Effective May 14, 1900.

Expires on Notice

From		To		On	Rate
Allendale	Ill.				5c
America	"				5
Belknap	"				5
xBender	"				5
xBillet	"				6
xBloomfield	"				5
xBrevoorts	Ind.				6
xBrownsville	Ill.				6
Calvin	"				5
Carmi	"				5
Carriers Mills	"				5
Cowling	"				5
Crossville	"				5
Eldorado	"				5
xGossett	"			Hay C. L.	5
Grand Chain	"	Cairo	Ill.	when destined to points	5
xGrayville Jct.	"			South	5
Grayville	"				5
Harrisburg	"			Illinois Distance	5
Keensburg	"			Tariff as Maximum	5
xLawrenceville Jct.	"				6
Lawrenceville	"				6
Ledford	"				5
Levings	"				5
xMasons	"				5
Mound City	"				5
Mt. Carmel	"				5
New Burnside	"				5
Norris City	"				5
xOaktown	"				5
Olmstead	"				5
Parker	"				5
xPatton	"				5
xQuarry Switch	"				5
xRidenhower	"				5
St. Francisville	"				5
xSchrodts	"				5
xSimpsons	"				5
xStokes	"				5
Stonefort	"				5
xTexas City	"				5
Tunnel Hill	"				5
Vienna	"				5
Vincennes	Ind.				6

298

On
Hay (C L)

Minimum Weight 20,000 lbs.

From

Alton.....Ill.
Ashmore..... "
Bethalto..... "
Buncker Hill..... "
Butler..... "
Charleston ..... "
Chrisman ..... "
Conlogue ..... "
Danville..... "
Dorchester ..... "
Dorseys..... "
Dudley..... "
Duncanville..... "
East Alton ..... "
Edgar..... "
Howardsville Xing ..... "
xEmbarras Sdg... "
xErnst..... "
Gays ..... "
Georgetown ..... "
Gillespie..... "
xGranite City..... "
Grover ..... "
Hillsboro .....Ill.
Horace ..... "
Hornsby ..... "
Hutsonville..... "
Irving ..... "
Kansas..... "
Lake View..... "
Litchfield..... "
Loxa..... "
Marshall ..... "
Marshall Jct..... "
Mattoon..... "
Middlesworth.... "
xMidland..... "
Mitchell ..... "
Moro..... "
Nameoki..... "
xNewport..... "
Nokomis ..... "
Ohlman ..... "
Oliver..... "
Paisley ..... "
Pana..... "
Paris .....Ill.
xPocock ..... "
Ridgefarm..... "
Robinson ..... "
xRobinson Creek. "
Rosamond ..... "
Shelbyville ..... "
xSnyder..... "
xSwango..... "
xTilton..... "
Tower Hill ..... "
xTrimble..... "
Union ..... "
Venice ..... "
Vermillion..... "
Vermillion Grove..... "
Walnut Prairie.. "
Westville ..... "
West York..... "
Wetzel ..... "
Windsor..... "
Witt ..... "
xWoodyard..... "

To
Cairo Ills.

Rate: 9 cents per 100 lbs.

E F Cost
FTM CCC&STL System
Cincinnati O

W D Holliday
AGFA CCC&STRY
St Louis Mo

W G Reynolds
Chief of Tariff Bur
Cincinnati O

R23344

299 Supplement No. 7 to I. C. C. No. 1422.

The Cleveland Cincinnati Chicago and St. Louis Railway Company

Peoria and Eastern Ry.

Dayton & Union R. R.

Cincinnati Northern Railroad

Freight Traffic Department

Tariff Bureau

Supplement No. 9 to Joint Freight Tariff No. X 1450

Issued June 26, 1902. Effective July 1st, 1902.

On

Hay, Carloads

Minimum Weight as per Official Classification.

From		To	Rate
x Ackerson Lake	Mich		
Addison Jct.	"		
Clarks Lake	"		
Cement City	"	Cincinnati Ohio	.12
Hudson	"		
x Lyonette	"		
x Manitou Beach	"		
Rollin	"		

Rates in Cents per 100 Pounds.

Issued by

Edward F Cost	W. T. Stevenson	C. J Brister
FTM CCC&StL Ry System	DFA Cinti: Nor.R.R.	AGFA CCC&StLRY System
Cincinnati Ohio	Jackson Mich	Cincinnati Ohio

B23344

300 Supplement No. 9 to I. C. C. No. 1422 (Cancels Supplement No. 8)

The Cleveland Cincinnati Chicago and St. Louis Railway Company
Peoria & Eastern Ry
Dayton & Union R. R.
Cincinnati Northern Railroad
Freight Traffic Department
Tariff Bureau
In Connection with
Illinois Central Railroad Mobile & Ohio R. R. Louisville & Nashville R. R. Southern Railway

Supplement No. 11 To Joint Freight Tariff No. X 1450
(Cancels Supplement No. 10)
Issued October 9th, 1902. Effective October 14, 1902.
On Hay Carloads

From	To	Rate	
Pana to Bethalto, Ill. incl.	Cairo Ill.	9c	Care I. C. or M&O Rys
	Evansville Ind.	9	Care L & N RR or Sou Ry
Bethalte to Vermillion Ills. Inclusive	To Carmi Ill.	8	Via Carmi & L&N RR
Danville to Carrier Mills	L&N RR to Evansville	1	
Ills. inclusive.	To Evansville	9	
Vermillion Ills.	Fontanet Ind.	6	Min. Wt. 20,000 lbs.

Rates in Cents per 100 Pounds

No claim will be entertained on traffic moving to Evansville, Ind. under this tariff for the purpose of equalizing the Cairo combination.

The above rates apply only on shipments destined to points South of the States of Kentucky and Virginia and East of the Illinois Central R. R. Cairo to Jackson, Tenn. and east of the M & O R R Jackson to Mobile, Ala.

Rates shown on original tariff to Cairo, Ills., on shipments destined beyond, from Cairo Division stations Oliver to Duncanville, Ills. inclusive are hereby cancelled and withdrawn.

For rates see Freight Tariff No. X 2570

Issued by

Edward F Cost
FTM CCC&StL Ry System
Cincinnati Ohio

Walter Nichols
DFA CCC&StL Ry
St Louis Mo

C J Brister
AGFA CCC&StL Ry System
Cincinnati Ohio

R., 23344

301 Supplement No.10 to I.C.C. No. 1422 (Cancels Supplement No.9)

The Cleveland Cincinnati Chicago and St. Louis Railway Company
Peoria & Eastern Ry
Dayton and Union R. R.
Cincinnati Northern Railroad
Freight Traffic Department
Tariff Bureau

In connection with

Illinois Central Railroad — Louisville & Nashville Railroad
Mobile & Ohio Railroad — Southern Railway

Supplement No. 12 to Joint Freight Tariff No. X 1450
(Cancels Supplement No. 11)

Issued October 24, 1902. Effective October 29, 1902.

On
Hay, Carloads

From	To		Rate	
Pana to Bethalto, Ill. inclusive.	Cairo	Ills.	9c	Care of I C or M & O Railways at ESt L
	Evansville	Ind.	9c	Care of L&N RR or Southern Railway at ESt L
Bethalto to Vermillion Ills. inclusive.	to Carmi	Ill.	8	ViaCarmi & L&NRR
Danville to Carrier Mills Ills. inclusive.	L&NRRtoEvansville to Evansville		1	
			9	
Vermillion Ills Ills.	Fontanet	Ind.	6	Min. Wt. 20,000 lbs.

Rates in Cents per 100 Pounds.

No claim will be entertained on traffic moving to Evansville, Ind., under this tariff for the purpose of equalizing the Cairo combination.

Above rates apply only on shipments destined to points south of the States of Kentucky and Virginia and East of the Illinois Central R R Cairo to Jackson, Tenn. and east of the M & O R R Jackson to Mobile, Ala.

Rates shown on original tariff to Cairo, Ills. on shipments destined beyond from Cairo Division stations Oliver to Duncanville, Ills., inclusive are hereby canceled and withdrawn.

For rates see Freight Tariff No. X. 2570.

Issued by

Edward F. Cost
FTM CCC&StL Ry System
Cincinnati Ohio

Walter Nichols
DFA CCC&StL Ry
St. Louis Mo.

C J Brister
AGFA CCC&StL Ry System
Cincinnati Ohio

R/, 23344.

302 Supplement No. 7 to ICC No. 1422. (Cancels Supplement No. 6)

The Cleveland? Cincinnati? Chicago and St. Louis Railway Company
Peoria and Eastern Rwy. and Dayton & Union R. R.
Freight Traffic Department.
Tariff Bureau
In connection with
Illinois Central Railroad, Louisville and Nashville R. R.
Mobile and Ohio Railroad
Supplement No. 8 to Joint Freight Tariff No. X-2370
Cancels Supplement No. 7

Issued April 16, L 1902. Effective April 21, 1902

on

Hay, Carloads.

From	To	Rate	
Pana to Bethalto, Ill. incl. to apply only on business destined to points south of the States of Kentucky and Virginia and east of the line of the M. & O. R. R.	Cairo, Ill.	9c	Care I. C. or M&O Ry.
	Evansville Ind.	9	Care L. & N. R. R.
Bethalto to Vermillion Ill. Inclusive.	Carmi Ill.	8	Via Carmi & L&N R.R.
Danville to Grover, Ill. inclusive	to Evansville, Ind. when destined for South East.	1	
		9	
Vermillion Ill.	Fontanet, Ind.	6	Min Wt. 20,000 lbs.

Rates in cents per 100 pounds.

Rates shown in original tariff and supplements apply only on shipments destined beyond.

Rates shown in Original tariff to Cairo, Ill. on shipments destined beyond, from Cairo Division stations Oliver to Duncanville, Ill. inclusive are hereby cancelled and withdrawn.

For rates see Freight Tariff X-2570.

Issued by

Edward F. Cost,
FTM CCC&StL Ry System
Cincinnati? Ohio

Walter Nichols,
DFA CCC&StL Ry
St. Louis? Mo.

C. J. Brister,
AGFA CCC&StL Ry System
Cincinnati?, Oh

303 The Cleveland Cincinnati Chicago and St. Louis Railway Company.
Peoria and Eastern Ry. and Dayton and Union R. R.

Freight Traffic Department.
Tariff Bureau

In connection with
Illinois Central Railway
Louisville & Nashville Ry
Mobile & Ohio Railroad.

Division Sheet No. 1006
To
Joint Freight Tariff No. X-2379.
Issued December 26th, 1900. Effective at once.
On
Hay, Carloads,
From
Pana to Bethalto, Illinois, Inclusive,
To
Cairo, Ill and Evansville, Indiana
Rate 9 cents per 100 pounds.

To apply only on business destined to points south of the State of Kentucky and Virginia and east of the M. & O. R. R.

Care of either Ill. Cent. or M. & O. Rys. when via Cairo, Ill. or care of L. & N. R. R. when via Evansville, Ind.,

Divisions
To East St. Louis, Ill. 7c
Beyond 2c

E. F. Cost,
FTM CCC&StL System
Cincinnati, Ohio.

W. D. Holliday,
AGFA CCC&StL Ry
St. Louis Mo.

C. J. Brister,
AGFA CCC&StL System
Cincinnati, Ohio.

R.-23344. W. D. H. H/O., 344.

304

On
Hay, (Carloads)
Minimum weight 20,000 pounds
From

Alton	Ill.	Hillsboro,	Ill.	Paris,	Ill.
Ashmore,	"	Horace	"	#Pocock,	"
Bethalto,	"	Hornsby,	"	Ridgefarm,	"
Bunker Hill,	"	Hutsonville,	"	Robinson,	"
Butler,	"	Irving,	"	#Robinson Creek,	"
Charleston,	"	Kansas,	"	Rosamond,	"
Chrisman,	"	Lake View,	"	Shelbyville,	"
Conlogue,	"	Litchfield,	"	#Snyder,	"
Danville,	"	Loxa,	"	#Swango,	"
Dorchester,	"	Marshall,	"	#Tilton,	"
Dorseys,	"	Marshall Jct.	"	Tower Hill,	"
Dudley,	"	Mattoon,	"	#Trimble,	"
Duncanville,	"	Middlesworth,	"	Union,	"
East Alton,	"	#Midland,	"	Venice,	"
Edgar,	"	Mitchell,	"	Vermillion,	"
Edwardsville Xing,	"	Moros,	"	Vermillion Grove,	"
#Embarras Sdg.	"	Namcoki,	"	Walnut Prairie,	"
#Ernst,	"	#Newport,	"	Westville,	"
Gays,	"	Nokomis,	"	West York,	"
Georgetown,	"	Ohlman,	"	Wetzel,	"
Gillespie,	"	Oliver,	"	Windsor,	"
"Granite City,	"	Palisley,	"	Witt,	"
#Grover,	"	Pana,	"	"Woodyard,	"

To
Cairo, Ills.

Rate 9 cents per 100 pounds.

E. F. Cost,
F. T. M. CCC&StL Ry System
Cincinnati, Ohio

W. D. Holliday,
AGFA CCC&StL Ry.
St. Louis, Mo.

W. C. Reynolds,
Chief of Tariff Bur.
Cincinnati, Ohio.

R. 23344

DEFT EX #7

Defendant's Exhibit 7—Wabash Joint Tariff.

G. F. O. C-674.

(Cancelling G. F. C. C-670.)

SOUTHERN RAILWAY COMPANY,

ST. LOUIS-LOUISVILLE LINES.

WABASH RAILROAD JOINT TARIFF,

APPLYING ON

Grain, Grain Products and Hay, C. L.,

FROM

WABASH RAILROAD STATIONS

TO

LOUISVILLE, KY.

When destined to Southeastern points, where the rate from Louisville is the same as from Evansville and Cairo.

EFFECTIVE AUGUST 25, 1902.

FROM	IN CENTS PER HUNDRED POUNDS.			FROM	IN CENTS PER HUNDRED POUNDS.		
	Grain	Grain Products	Hay		Grain	Grain Products	Hay
Kansas	Ill.	6	7	8	Carthage	Ill.	12	14	13
Keithsburg	"	6	7	8	Bentley	"	12	14	13
Peru	"	6	7	8	Denver	"	12	14	13
Pittsburgh Crossing	"	6	7	8	Downs	"	12	14	13
Shumway	"	6	7	8½	Clinton	"	12	14	13
Mendon Jct.	"	6	7	9	Golden	"	12	14	13
Quincy	"	6	7	9	Hocks	"	12	14	13
Rich	"	6	7	9½	Clayton	"	12	14	13½
Ramsey	"	6	7	9½	Mendon	"	12	14	13½
S. Olive	"	6	7	9½	Mt. Sterling	"	12	14	13½
Litchfield	"	6	7	9½	Havanna	"	12	14	13½
Stony Road	"	6½	7½	9½	Gilfords	"	12	14	13½
Hyland	"	6½	7½	10	Versailles	"	12	14	13½
Byrd	"	10	11	10	Terry Springs	"	12	14	13½
Hardinsville	"	10	11	10½	Marcelain	"	12	14	13½
Niner	"	10	11	10½	Shepherd	"	12	14	14
Carbondale	"	10	11	10½	Aledlio	"	12	14	14
Taylorville	"	10	11	10½	Stolls	"	12	14	13
Pillsyre	"	10	11	11	Kinderhook	"	12	14	13
Hampton	"	10	11	11	Barry	"	12	14	13
Mt. Sterling	"	10	11	11	Hadley	"	12	14	13
Ruby	"	10	11	11	Arden	"	12	14	13
Brighton	"	12	14	13½	Bayliss	"	12	14	13
Camp Point	"	12	14	13	New Salem	"	12	14	13
Weston	"	12	14	13	Plainfield	"	12	14	13

To points in Carolina territory, where rates from Evansville and Cairo are 2 cents cwt. higher than from Louisville, add 1 cent, cwt. to above for correct proportion to Louisville.

Geo. F. Cram Printing Co., St. Louis, Mo.

FROM	IN CENTS PER HUNDRED POUNDS.			FROM	IN CENTS PER HUNDRED POUNDS.		
	Grain.	Grain Products	Hay		Grain.	Grain Products	Hay
Pittsfield Jct.	Ill. 12	14	13	Windsor	Ill. 10	11	11
Griggsville	" 12	14	13	Bruce	" 10	11	11
Valley City	" 13	14	13	Sullivan	" 10	11	11
Naples	" 13	14	13½	Cushman	" 10	11	11
Bluffs	" 13	14	13½	Lovington	" 10	11	11
Neelys	" 13	14	13½	Hammond	" 10	11	11
Morgan	" 13	14	13½	Voorhies	" 10	11	11
Chapin	" 11	13	11	Bement	" 10	11	11
Markham	" 10	11	11	Monticello	" 10	11	12
Jacksonville	" 10	11	11	Lodge	" 10	11	12½
Jacksonville Jct.	" 10	11	11	Galesville	" 10	11	12½
Arnold	" 10	11	13	Mansfield	" 10	11	12½
Orleans	" 10	11	13	Blue Ridge	" 10	11	12½
Alexander	" 10	11	13	Oaman	" 10	11	12½
Island Grove	" 10	11	13	Howard	" 10	11	12½
Berlin	" 10	11	13½	Footsland	" 10	11	12½
Bates	" 9	9	13½	Proctor	" 10	11	12½
Curran	" 9	9	11	Tyler	" 10	11	12½
Sanger	" 9	10	11	Gilbert	" 10	11	12½
Springfield Jct.	" 9	10	11	Garber	" 10	11	12½
Springfield	" 9	9	11	Sibley	" 10	11	12½
Starnes	" 9	10	13½	Struwe	" 10	11	12½
Riverton	" 10	11	13½	Streator	" 13	14	14
Dawson	" 10	11	13	Manville	" 13	14	14
Buffalo	" 10	11	13	Cornell	" 13	14	14
Lanesville	" 10	11	13	Kewe	" 13	14	14
Illiopolis	" 10	11	13	Pontiac Jct	" 13	14	13
Niantic	" 10	11	13	Pontiac	" 13	14	13
Harristown	" 10	11	13½	McDowell	" 13	14	13
Wyckles	" 10	11	13½	Lisbonia	" 13	14	13
Decatur	" 9	9	13½	Purrot	" 13		13
Sangamon	" 10	11	13½	Wing	" 13		13
Oakley	" 10	11	13½	Sammonia	" 13		13½
Cerro Gordo	" 10	11	13	Emington	" 13		13½
Milmine	" 10	11	13	Campus	" 13		14
Ivesdale	" 10	11	13	Reddick	" 13		14
Bordorus	" 10	11	13½	Grosse	" 13		14
Tolono	" 10	11	13½	Essex	" 13		14
Philo	" 10	11	13½	Horse Creek	" 13		14
Champaign	" 10	11	13	Custer Park	" 13		14
Urbana	" 10	11	13	Ritchie	" 13		14
Mira	" 10	11	13½	Symerton	" 13		14
Deems	" 10	11	13½	Manhattan	" 13		14½
Sidney	" 10		13½	Brisbane	" 13		14½
Homer	" 10		13½	Steele	" 13		14½
Fairmount	" 10		13	Marley	" 13		14½
Catlin	" 10		13	Alpine	" 12		14½
Tilton	" 10		13	Orland	" 13		14½
Altamont	" 10	11	11	Palos Springs	" 13		14½
Effingham	" 10	11	11	Worth	" 13		14½
Blue Point	" 10	11	11	Chicago Ridge	" 13		14½
Shumway	" 10	11	11	Oaklawn	" 13		14½
Stewardson	" 10	11	11	Clarkdale Jct	" 13		13
Herborn	" 10	11	11	Forest Hill	" 13		13
Strasburg	" 10	11	11				

Issued by

R. A. CAMPBELL,

Assistant General Freight Agent.

ST. LOUIS, MO., Aug. 24, 1903.

307

Southern Railway Company.

St. Louis-Louisville Lines.

Freight Traffic Department.

Division Sheet No. 1.

To

G. F. O. C-674.

Applying on Grain, Grain Products and Hay

From

Wabash Railroad Stations

To

Louisville for Southeast and Carolina.

When destined Southeastern Points,

Allow Southern Ry. from East St. Louis to Louisville
Grain 3c cwt
Grain products 3c cwt
Hay 4c cwt
Wabash R. R. remainder

When destined Carolina Territory.

Allow Wabash R. R. to East St. Louis, same revenue as they receive on business to Southeastern points.
Southern Ry. remainder (see note)
Note—Sou. Ry. minimum on grain East St. Louis to Louisville to be 4c per cwt. Wabash receiving balance of rate.

St. Louis, Mo. Aug. 25th, 1902. R. A. Campbell.
Authy. C. F. C. 261. A. G. F. A.

308 DEF'T EX. # 8.

Defendant's Exhibit 8—*Mobile and Ohio Freight Tariff.*

Issue A-41365 I. C. C. No. 3609.

500 (Cancels I. C. C. No. 2963.) File 71094.

Mobile & Ohio Railroad Company.

Freight Tariff No. I. S. 5696,

(Cancels Freight Tariff I. S. 4345)

—Applying on—

Classes and Commodities.

Issued September 20, 1905. Effective October 2, 1905.

—Applying between—

St. Louis and Carondelet, Mo., Belleville, East St. Louis, East Carondelet, Madison, Venice, Granite City, Ill.

—and—

Cairo, Ill.

* * * * *

Between

St. Louis and Carondelet, Mo., Belleville, East St. Louis, East Carondelet, Madison, Venice and Granite City, Ill.

and

Cairo, Illinois.

Rates in cents per 100 pounds.

	CLASSES									
	1	2	3	4	5	6	7	8	9	10
North-bound	34	29	24	19	14½	14	12	9½	8½	7½
South-bound	34	29	24	17⁵	14	13⁷⁵	12	9½	8½	7½

* * * * *

309 Issue No. A-46376. Supplement No. 12 to I. C. C. No. 3609
File No. 2-107574.
Mobile & Ohio Railroad Company
General Freight Department
Supplement No. 12
To
Freight Tariff No. I. S. 5696
Applying on Classes and Commodities
between
St. Louis, Mo., and Carondelet, Mo., Belleville, East St. Louis, East Carondelet? Madison, Venice, Granite City, Ill. and Cairo, Illinois

Issued St. Louis, Mo., Apr. 20th, 1906. (Advances May 3rd, 1906
Effective (Reductions Apr. 26th, 1906

Between Cairo.....Ill. and	In Cents per 100 pounds				
	Classes.				
	1	2	3	4	5
St. Louis.....Mo. Carondelet.....Ill. Belleville.....Ill. East St. Louis.....Ill. East Carondelet.....Ill. Madison.....Ill. Venice.....Ill. Granite City.....Ill.	34.00	28.58	22.18	18.05	14.44

Between Cairo.....Ill. and	In Cents per 100 Pounds.				
	Classes.				
	6	7	8	9	10
St. Louis.....Mo. Carondelet.....Ill. Belleville.....Ill. East St. Louis.....Ill. East Carondelet.....Ill. Madison.....Ill. Venice.....Ill. Granite City.....Ill.	14.00	12.00	9.50	8.46	7.50

Supplements No. 6-10-11 and 12 include all changes.
See other side.

Issued by,
J. M. Denyven,
Gen'l Freight Agent.

Approved by,
Haiden Miller,
Freight Traffic Manager.

310 Issue No. A-44381 Supplement No. 6 to I. C. C. No. 3609
File No. 118508

(Cancels Supplements No. 3, 4 & 5)
Mobile and Ohio Railroad Company.
General Freight Department.
Supplement No. 6 (Cancels Supplements No. 3, 4 & 5) to
Freight Tariff No. I. S. 5675
Applying On Classes and Commodities
Between
St. Louis and Carondelet, Mo., Belleville, East St. Louis,
East Carondelet, Madison, Venice, Granite City, Ill.
and
Cairo, Illinois.

Issued St. Louis, Mo., Jan. 30th, 1906 Effective Jan. 15th, 1906

To Cairo.....Ill. From	In Cents per 100 Pounds
	Apples, Potatoes & Vegetables, Carloads (Minimum weight 20000 pounds)
St. Louis.....Mo. East St. Louis...Ill. Belleville .....Ill.	10

To Cairo.....Ill. From	In Cents per 100 Pounds
	Vitrified Wall Coping, Straight Carloads or Mixed with Sewer Pipe and Drain Tile (Minimum weight 30000 pounds)
East St. Louis...Ill. St. Louis.....Mo.	7.5

Please refer to above numbered Tariff and be advised that, effective as above, special commodity rate of 14.5 cents on Tobacco, Plug, O. R. between St. Louis Group and Cairo will be cancelled.

Apply Class Rates.

Refer to above numbered Tariff and be advised that rates named there in on Special Iron are governed by list of articles taking Special Iron rates as shown in Southern Freight Classification, M & O R R No. 172, I. C. C. 3676, or subsequent issues.

Refer to above Tariff and note that rates named there in between East St. Louis, Ill. (M & O R R Depot) and Cairo, Ill. are in no case to be higher than rates in Freight Tariff No. 616.

Supplements No. 6 includes all changes.

Issued by
J. M. Denyven
Gen'l Freight Agent

Approved by
Haiden Miller
Freight Traffic Mgr.

311 Issue No. A-45139. Supplement No. 10 to I. C. C. No. 3609.
File No. 122160.

(Cancels Supplements No. 7-8-9.)

Mobile and Ohio Railroad Company.

General Freight Department.

Supplement No. 10

(Cancels Supplements No. 7-8-9)

To

Freight Tariff No. I. S. 5696

Applying on

Classes and Commodities

Between

St. Louis and Carondelet, Mo., Belleville, East St. Louis, East Carondelet, Madison? Venice, Granite City, Ill.

and

Cairo, Illinois.

Issued St. Louis, Mo., March 2nd, 1906. Effective Mar. 8th, 1906.

From Cairo.....Ill. To	In Cents per 100 Pounds.	
	Wagon Material, Viz: Single and Double Trees, Neck Yokes, Ironed and Partly Finished, Boxed, Crated or in Bundles.	
	Carloads.	Less than Carloads.
St. Louis.....Mo. East St. Louis.....Ill. Belleville.....Ill.	11	15

From Cairo.....Ill. To	Per Bale.
	Cotton Linters, Compressed or Uncompressed.
St. Louis.....Mo. East St. Louis.....Ill. Belleville.....Ill.	75

Please refer to the above numbered Tariff and Add Tallow to list of articles taking Packing House Product rates.

Please refer to Supplement No. 6 to above numbered Tariff and be advised that rates named therein will not become effective until Feb. 15th, 1906, instead of Jan. 15, 1906.

Supplements No. 6-10, include all changes.

Issued by
J. M. Denyven
Gen'l Freight Agent

Approved by
Haiden Miller
Freight Traffic Mgr.

312 Issue No. A-45418. Supplement No. 11 to I. C. C. No. 3609. File No. 122965.

Mobile and Ohio Railroad Company.

General Freight Department.

Supplement No. 11

To

Freight Tariff No. I. S. 5696

Applying on

Classes and Commodities

Between

St. Louis, Mo., and Carondelet, Mo., Belleville, East St. Louis, East Carondelet, Madison, Venice, Granite City, Ill.

and

Cairo, Illinois.

Issued St. Louis, Mo., Mar. 14th, 1906. Effective Mar. 20th, 1906

From	In Cents per 100 Pounds.
St. Louis.....Mo. East St. Louis.....Ill. Belleville.....Ill. To	Hay Bale Ties, Carloads (Minimum weight 30,000 pounds).
Cairo.....Ill.	10

Supplement No. 6-10 and 11 include all changes.

Issued by
J. M. Denyoen,
Gen'l Freight Agent.

Approved by
Haiden Miller,
Freight Traffic Mgr.

* * * * *

313 DEF'T EX. #9.

Defendant's Exhibit 9—Southern Ry. Co. Joint Tariff.

I. C. C. No. C–147
Southern Railway Company
St-Louis & Louisville Lines
Freight Traffic Department
Joint Tariff
Applying
Class and Commodity Rates
Between
East St. Louis & Belleville, Ill.
and
Evansville & Mt. Vernon, Ind.

Issued April 18, 1902. Effective May 1, 1902

Commodity	From	To	Rate in crates per 100 lbs.
Hay, C. L.....	E. St-Louis, Ill.	Evansville, Ind.	6½
Minimum 20,000 lbs.....	Belleville, Ill.	Mt. Vernon "	

R. A. Campbell,
General Freight Agent,
St-Louis, Mo.

DEF'T EX. #10

Defendant's Exhibit 10—*Southern Ry. Co. Tariff.*

Freight Tariff
of the
Southern Railway Company
Publishing rates on
Classes and Commodities

Governed by Southern Classification (Southern Railway I. C. C. No. 9192, Supplement thereto or subsequent issues) except where otherwise provided.

Southern Tariff No. 23
From
Ohio and Mississippi River Crossings
To
Southeastern Common and Junction Points.

Issues August 21, 1905. Effective August 24, 1905.

314 Southern Railway Co., Southeastern Tariff No. 23 Page 105.

To Atlanta

From	Per Hundred Pounds. 1	2	3	4	5	6	A	B	C	D	E	H	F	Per Bbl. †CL	Per 100 Lbs. Special Iron See Note Page 58. LCL
Cincinnati.....O. Covington.....Ky. Newport.....Ky. Lexington.....Ky. Frankfort.....Ky.	98	87	78	63	52	41	28	33	26	22	48	48	44	31	34
Louisville.....Ky. Jeffersonville..Ind. New Albany...Ind. Owensboro.....Ky. Evansville...Ind. Mt. Vernon...Ind. Henderson.....Ky. Paducah.....Ky. Brookport.....Ill. Cairo.....Ill. East Cairo.....Ky. Bird's Point...Mo. Columbus.....Ky. Belmont.....Mo. Hickman.....Ky. Mound City....Ill.	98	87	78	63	52	41	28	33	26	22	48	48	44	31	34
St. Louis.....Mo. E. St. Louis....Ill. Belleville.....Ill.	121	106	95	75	62	49	35	41	33	27	56	58	†58	38	42
Memphis....Tenn.	94	83	74	59	48	37	24	29	22	f18	44	44	f36	27	30
Nashville....Tenn. W. Nashville.Tenn.	66	59	54	43	35	29	20	25	19	15	33	35	30	23	26
New Orleans....La.	94	83	74	59	48	37	24	29	22	f18	44	44	f36	27	30
Natchez.....Miss. Vicksburg....Miss. Greenville....Miss. Jackson.....Miss.	94	83	74	59	48	37	24	29	22	18	44	44	36	27	30

315 DEF'T EX. #11

Defendant's Exhibit 11—*Missouri Pacific Joint Tariff.*

125 I. C. C. No. 268, cancels I. C. C. No. 260.
The Missouri Pacific Railway (St. L., I. M. & S. Ry.),
The Mobile & Ohio Railroad,
The Illinois Central Railroad,
The Louisville & Nashville Railroad,
The Southern Railway (St. Louis Division).

The rates, rules and regulations in this issue are the separate rules and regulations of the initial carrier named and its connections, and are compiled and published by me as Agent of said carrier, and from the separate written declaration of said initial carrier.

Through Freight Tariff No. 38-E
(Cancels Through Freight Tariff No. 38-D.)
—Applying On—
Reconsigned Grain, Grain Products and Hay, and Milling in Transit of Wheat, Corn and Oats,
—From—
St. Louis and Carondelet, Mo., and East St. Louis, Ill.,
—To Points In—
Southeastern Territory
As Described Herein.

Effective March 23, 1905.

D. M. Goodwyn,
General Freight Agent.
Louisville & Nashville R. R.,
Louisville, Ky.

W. R. Peabody,
General Freight Agent,
St. L., I. M. & S. Ry. Co., and Leased, Operated and Independent Lines.
St. Louis, Mo.

J. R. Peachy,
Ass't General Freight Agent,
Illinois Central Railroad,
St. Louis, Mo.

R. L. McKellar,
A. F. T. M.,
Southern Railway,
Louisville, Ky.

R. A. Campbell,
Ass't Gen'l Freight Agent,
Southern Railway,
St. Louis, Mo.

J. M. Denyven,
General Freight Agent
Mobile & Ohio Railroad,
S. Louis, Mo.

W. E. Keepers,
General Freight Agent,
Illinois Central Railroad,
Chicago, Ill.

To I. C. C. March 17, 1906. Compiled by S. Frink, St. Louis, Mo.

316 *Rules and Regulations for Reconsignment of Grain, Grain Products, and Hay from St. Louis and East St. Louis, and for Milling in Transit of Corn, Wheat, and Oats at St. Louis and East St. Louis, Destined to Southeastern Territory.*

Territorial Description.

Southeastern Territory.

It includes points east of the Mobile & Ohio R. R. from Mobile, Ala., to Corinth, Miss. (not including Aberdeen or Columbus, Miss.), and on and south of the Memphis Division of the Southern Ry. from Corinth (but not including Corinth), to and including Chattanooga, Tenn.; thence via Southern Railway to, but not including Cleveland, Tenn., and thence south and west of an imaginary direct line through Murphy, N. C., to Walhalla, S. C., thence south and west of the Southern Railway through Seneca, Anderson, Belton, Abbeville, Greenwood, Newberry and Alston to Columbia, S. C., thence south and west of the Atlantic Coast line to Wilmington, N. C., thence via the Atlanta Seaboard and Gulf of Mexico Coast to Mobile, Ala.

Special Ruling.

The rules and regulations governing reconsignment of Grain and Hay, and the Milling in Transit of Grain Products, as provided for Southeastern Territory, will also apply to Nashville and West Nashville, Tenn.

Rates and rules governing the reconsignment of Grain, will also apply on shipments destined to local stations on the Montgomery Division of the Mobile & Ohio R. R. east of Columbus, Miss.

Rates and rules governing the reconsignment of Hay and the milling in transit of Grain Products will not apply to local stations on the Montgomery Division of the Mobile & Ohio R. R. east of Columbus, Miss.

Reconsignment and Milling in Transit rates and rules will not apply on shipments destined to local stations on the Louisville & Nashville Railroad, nor to Pensacola, Fla.

Reconsignment of Grain to Southeastern Territory.

Grain, in carloads, minimum weight 30,000 lbs., originating beyond, may be reconsigned from St. Louis, Mo., or East St. Louis, Ill., to destinations in Southeastern Territory, as described above, via Cairo, Ill., Evansville, Ind., or Louisville, Ky., at one (1)
317 cents per one hundred pounds higher than the published rates from Cairo, Ill., or Evansville, Ind., to destination.

The rate of one (1) cent per 100 pounds from St. Louis, Mo.,

will only apply from elevators or warehouses located on the tracks of the Wiggins Ferry Co. or Terminal Railroad Association at St. Louis, and will not include the cost of switching at St. Louis from elevators or warehouses located on connecting lines at that point.

The rates named in this tariff will include the cost of switching to an amount not exceeding one-half cent per 100 lbs., minimum $2.00 per car, from connecting lines' terminals in East St. Louis, Granite City, Madison, Venice and East Carondelet, Ill., to elevators, mills and warehouses having track connection located in the same places, provided the rate to East St. Louis does not make delivery to the elevator, mill or warehouse to which the freight is delivered, and also the cost of switching from industries, warehouses, elevators and mills on connecting railroads in East St. Louis, Madison, Venice, Granite City and East Carondelet, having track connection, at not exceeding one-half cent per 100 lbs., minimum $2.00 per car, and additional switching may be absorbed when necessary to equalize with competing lines.

Switching bills for movement into elevators, mills or warehouses will not be absorbed when presented more than six months after their date.

Reconsignment of Sorghum Seed to Southeastern Territory.

The Rules and Regulations governing the reconsignment of Corn to points named herein will also apply on reconsigned shipments of Sorghum Seed. Exception: Will not apply via the Louisville & Nashville R. R.

Reconsignment of Hay to Southeastern Territory.

Hay in carloads, minimum weight 20,000 lbs, originating beyond, may be reconsigned from St. Louis, Mo., or East St. Louis, Ill., via Belmont, Mo., Cairo, Ill., Evansville, Ind., or Louisville, Ky., to destinations in Southeastern territory, as described above, at four (4) cents per 100 lbs. higher than the published rates from Cairo, Ill., or Evansville, Ind., to destination.

The rates named in this tariff will include the cost of switching to an amount not exceeding one-half cent per 100 lbs., minimum $2.00 per car, from connecting lines' terminals in East St. Louis, Granite City, Madison, Venice and East Carondelet, Ill., to
318 elevators, mills and warehouses having track connection located in the same places, provided the rate to East St. Louis does not make delivery to the elevator, mill or warehouse to which the freight is delivered, and also the cost of switching from industries, warehouses, elevators and mills on connecting railroads in East St. Louis, Madison, Venice, Granite City and East Carondelet, having track connection, at not exceeding one-half cent per 100 lbs., minimum $2.00 per car, and additional switching may be absorbed when necessary to equalize with competing lines.

Switching bills for movement into elevators, mills or warehouses will not be absorbed when presented more than six months after their date.

Reconsignment of Malt to Beaufort, S. C.; Brunswick, Ga.; Charleston, Port Royal, S. C.; Savannah, Ga.; Ten Mile, S. C.; Fernandina, Jacksonville, Live Oak (For A. C. L. Stations South of Live Oak), Mayport, Gainesville, Lake City (proper), Live Oak and Palatka, Fla.

Malt may be reconsigned from St. Louis, Mo., or East St Louis, Ill., to above points, via Cairo, Ill., Evansville, Ind., or Louisville, Ky., at four (4) cents per one hundred pounds higher than the published rates from Cairo, Ill., or Evansville, Ind., to destination, under the rules provided for Milling in Transit. Barley tonnage will be required.

38-E

125 Supplement No. 3 to I. C. C. No. 268.

(Cancels Supplement No. 2.)

The Missouri Pacific Railway (St. L., I. M, & S. Ry.),
The Mobile & Ohio Railroad,
The Illinois Central Railroad,
The Louisville & Nashville Railroad,
The Southern Railway (St. Louis Division).

The rates, rules and regulations in this issue are the separate rates, rules and regulations of the initial carrier named and its connections, and are compiled and published by me as Agent of said carrier, and from the separate written declaration of said initial carrier.

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319 Supplement No. 3

(Cancels Supplement No. 2. Supplement No. 3 contains all changes)
—to—
Through Freight Tariff No. 38-E
—Applying on—
Reconsigned Grain, Grain Products and Hay, and Milling in Transit of Wheat, Corn and Oats,
—From—
St. Louis and Carondelet, Mo., and East St. Louis, Ill.,
—to Points in—
Southeastern Territory
As Described Herein.

Effective June 19, 1906.

D. M. Goodwyn,
General Freight Agent.
Louisville & Nashville R. R.,
Louisville, Ky.

W. R. Peabody.
General Freight Agent,
St. L., I. M. & S. Ry. Co., and Leased, Operated and Independent Lines.
St. Louis, Mo.

J. R. Peachy,
Ass't General Freight Agent,
Illinois Central Railroad,
St. Louis, Mo.

R. L. McKellar,
A. F. T. M.,
Southern Railway,
Louisville, Ky.

R. A. Campbell,
Ass't Gen'l Freight Agent,
Southern Railway,
St. Louis, Mo.

J. M. Denyven,
General Freight Agent,
Mobile & Ohio Railroad,
St. Louis, Mo.

W. E. Keepers,
General Freight Agent,
Illinois Central Railroad,
Chicago, Ill.

To I. C. C. June 14, 1906. Compiled by S. Frink, St. Louis, Mo.

2nd Corrected Page 2.

Milling in Transit.

Wheat, Corn or Oats brought from Illinois or the territory west of the Mississippi river to St. Louis, Mo., or East St. Louis, Ill., may be milled at those places and be reshipped, thence via Belmont, Mo., Cairo, Ill., Evansville, Ind., or Louisville, Ky., as Flour, Meal, Hominy, Grits, Bran, Middlings, Shorts, Shipstuff or Feed, minimum weight 1250 lbs., to destinations in Southeastern Territory at four (4) cents per 100 lbs. or eight (8) cents per barrel, higher than the published rates from Cairo, Ill., or Evansville, Ind., to destination; and Flour and Corn Meal in barrels or sacks and Chop

Feed, Bran, Middlings, Shorts and Shipstuff, in sacks, C. L.,
320 minimum weight 30,000 lbs., at two (2) cents per 100 lbs., or four (4) cents per barrel higher than the published rates from Cairo, Ill. or Evansville, Ind. to destination.

NOTE.—The above milling in transit rates shall not apply on shipments of Flour, in Classes C and F or under special commodity rates, when destined to stations on the Southern Railway (Birmingham Division), in Alabama, Littleton to Hudson, both inclusive, or to stations on the St. Louis & San Francisco R. R., Adamsville to Plantersville, both inclusive.

Reconsignment of Flour, Etc.

The milled products of Grain, as specified under milling in transit, originating beyond, may be reconsigned from St. Louis, Mo., or East St. Louis, Ill., at the rates and under the conditions provided for the same when milled at St. Louis or East St. Louis.

General Rules Governing Milling in Transit and Reconsignment of Flour, Grain and Hay.

Rule 1. Traffic subject to these rules is Flour, Grain and Hay, consigned locally to St. Louis or East St. Louis and reshipped, or that is consigned through these gateways and accorded the privilege of stopping at St. Louis or East St. Louis, for milling in transit, cleaning, sacking, mixture or handling through elevators, warehouses or railroad yards for any purpose whatever, except that Grain or Hay and products of Wheat or Corn enumerated under Milling in Transit, stopped in railroad yards in St. Louis or East St. Louis for inspection in original cars, under the supervision of the Chairman of the Southern Freight Association, shall be considered through shipments and be handled on the basis of established through rates and divisions.

Rule 2. All milling in transit and reconsignment is to be subject to the supervision of the Chairman of the Southern Freight Association.

Rule 3. (*a*) In order to secure the proportional rate, original paid freight bills or certified copies, as provided herein, must be surrendered to the Chairman of the Southern Freight Association.

If shippers desire to retain possession of the original paid freight bills, such originals can be released by presentation of a copy written in ink, together with the original, to the Chairman of the Southern Freight Association, who will certify the copy, if correct, and cancel the original.

On surrender by the shipper of either the original or the
321 certified copy of paid freight bill, the Chairman will endorse the proportional rate authorized herein on shippers' tickets or bills of lading.

(*b*) Shippers must surrender paid freight bills for the same kind

of property as is reconsigned, *i. e.*, Wheat or Corn paid freight bills for products of Wheat or Corn; Wheat paid freight bills for Wheat; Corn paid freight bills for Corn; Oats paid freight bills for Oats; Hay paid freight bills for Hay; Corn or Oats paid freight bills for Feed or Crop.

(*c*) Flour, Grain or Hay loaded from mills, elevators, warehouses or on tracks in St. Louis shall be rated from St. Louis.

Flour, Grain or Hay loaded from mills, elevators, warehouses or on tracks in East St. Louis shall be rated from East St. Louis.

Rule 4. Paid freight bills, which are not surrendered within six months from the date of their issue, will not be accepted for reconsignment or milling in transit.

Rule 5. Paid freight bills must cover as much weight as is reconsigned. If weight of Flour, Grain or Hay reconsigned or milled in transit exceeds the weights shown on paid freight bills, St. Louis or East St. Louis proper carload rate will be charged on the excess. Any excess of weight shown on inbound freight bills over the weight shipped out, may be credited to the shipper, and applied on subsequent shipments.

Rule 6. Waybills covering traffic carried at these proportional rates must show the point of origin and the Chairman's reconsignment or milling in transit number, and copies of waybills for shipments forwarded under these rules must be furnished to the Chairman of the Southern Freight Association.

Rule 7. Reconsignment or milling in transit will be accorded to such shippers only as conform to these rules.

Application of Rates.

Via St. L. I. M. & S. Ry.

The rates provided herein will apply via St. Louis, Iron Mountain & Southern Ry., Belmont, Mo., and Memphis, Tenn., on Grain Products (except Flour, Corn Meal, Chop Feed, Bran, Middlings, Shorts and Shipstuff in carloads), but not on Grain or Hay reconsigned to Southeastern Territory.

They will also apply on Malt, via Belmont, Mo., when reconsigned to points specified in Malt Item. 38-E

322 125 Supplement No. 2 to I. C. C. No. 268.
(Cancels Supplement No. 1)
The Missouri Pacific Railway (St. L., I. M. & S. Ry.),
The Mobile & Ohio Railroad,
The Illinois Central Railroad,
The Louisville & Nashville Railroad,
The Southern Railway (St. Louis Division.)

The rates, rules and regulations in this issue are the separate rates, rules and regulations of the initial carrier named and its connections, and are compiled and published by me as Agent of said carrier, and from the separate written declaration of said initial carrier.

Supplement No. 2.
(Cancels Supplement No. 1)
—To—
Through Freight Tariff No. 38-E
—Applying on—
Reconsigned Grain, Grain Products and Hay, and Milling in Transit of Wheat, Corn and Oats,
—From—
St. Louis and Carondelet, Mo., and East St. Louis, Ill.,
—To Points In—
Southeastern Territory
As Described Herein.

Effective May 1, 1906.

D. M. Goodwyn,
General Freight Agent,
Louisville & Nashville R. R.,
Louisville, Ky.

W. R. Peabody,
General Freight Agent,
St. L., I. M. & S. Ry. Co. and
Leased, Operated and Independent Lines,
St. Louis, Mo.

J. R. Peachy,
Ass't General Freight Agent,
Illinois Central Railroad,
St. Louis, Mo.

R. L. McKellar,
A. F. T. M.,
Southern Railway,
Louisville, Ky.

R. A. Campbell,
Ass't Gen'l Freight Agent,
Southern Railway,
St. Louis, Mo.

J. M. Denyven,
General Freight Agent,
Mobile & Ohio Railroad,
St. Louis, Mo.

W. E. Keepers,
General Freight Agent,
Illinois Central Railroad,
Chicago, Ill.

To I. C. C. April 26, 1906. Compiled by S. Frink, St. Louis, Mo.

323 Corrected Page 2.

Milling in Transit.

Wheat, Corn or Oats brought from Illinois or the territory west of the Mississippi river to St. Louis, Mo., or East St. Louis, Ill., may be milled at those places and be reshipped, thence via Belmont, Mo., Cairo, Ill., Evansville, Ind., or Louisville, Ky., as Flour, Meal, Hominy, Grits, Bran, Middlings, Shorts, Shipstuff or Feed, minimum weight 1250 lbs., to destinations in Southeastern Territory at four (4) cents per 100 lbs. or eight (8) cents per barrel, higher than the published rates from Cairo, Ill., or Evansville, Ind. to destination; and Flour and Corn Meal in barrels or Sacks and Chop Feed and Bran in Sacks C. L. minimum weight 30,000 lbs. at two (2) cents per 100 lbs. or four (4) cents per barrel higher than the published rates from Cairo, Ill. or Evansville, Ind. to destination.

NOTE.—The above milling in transit rates shall not apply on shipments of Flour, in Classes C and F or under special commodity rates, when destined to stations on the Southern Railway (Birmingham Division), in Alabama, Littleton to Hudson, both inclusive, or to stations on the St. Louis & San Francisco R. R., Adamsville to Plantersville, both inclusive.

Reconsignment of Flour, etc.

The milled products of Grain, as specified under milling in transit, originating beyond, may be reconsigned from St. Louis, Mo., or East St. Louis, Ill., at the rates and under the conditions provided for the same when milled at St. Louis or East St. Louis.

General Rules Governing Milling in Transit and Reconsignment of Flour, Grain and Hay.

Rule 1. Traffic subject to these rules is Flour, Grain and Hay, consigned locally to St. Louis or East St. Louis and reshipped, or that is consigned through these gateways and accorded the privilege of stopping at St. Louis or East St. Louis, for milling in transit, cleaning, sacking, mixture or handling through elevators, warehouses or railroad yards for any purpose whatever, except that Grain or Hay and products of Wheat or Corn enumerated under Milling in Transit, stopped in railroad yards in St. Louis or East St. Louis for inspection in original cars, under the supervision of the Chairman of the Southern Freight Association, shall be considered
324 through shipments and be handled on the basis of established through rates and divisions.

Rule 2. All milling in transit and reconsignment is to be subject to the supervision of the Chairman of the Southern Freight Association.

Rule 3. (*a*) In order to secure the proportional rate, original

paid freight bills or certified copies, as provided herein, must be surrendered to the Chairman of the Southern Freight Association.

If shippers desire to retain possession of the original paid freight bills, such originals can be released by presentation of a copy written in ink, together with the original, to the Chairman of the Southern Freight Association, who will certify the copy, if correct, and cancel the original.

On surrender by the shipper of either the original or the certified copy of paid freight bill, the Chairman will endorse the proportional rate authorized herein on shippers' tickets or bills of lading.

(*b*) Shippers must surrender paid freight bills for the same kind of property as is reconsigned, *i. e.*, Wheat or Corn paid freight bills for products of Wheat or Corn; Wheat paid freight bills for Wheat; Corn paid freight bills for Corn; Oats paid freight bills for Oats; Hay paid freight bills for Hay; Corn or Oats paid freight bills for Feed or Chop.

(*c*) Flour, Grain or Hay loaded from mills, elevators, warehouses or on tracks in St. Louis shall be rated from St. Louis.

Flour, Grain or Hay loaded from mills, elevators, warehouses or on tracks in East St. Louis shall be rated from East St. Louis.

Rule 4. Paid freight bills, which are not surrendered within six months from the date of their issue, will not be ac-*pc*ted for reconsignment or milling in transit.

Rule 5. Paid freight bills must cover as much weight as is reconsigned. If weight of Flour, Grain or Hay reconsigned or milled in transit exceeds the weights shown on paid freight bills, St. Louis or East St. Louis proper carload rate will be charged on the excess. Any excess of weight shown on inbound freight bills over the weight shipped out, may be credited to the shipper, and applied on subsequent shipments.

Rule 6. Waybills covering traffic carried at these proportional rates must show the point of origin and the Chairman's reconsignment or milling in transit number, and copies of waybills
325 for shipments forwarded under these rules must be furnished to the Chairman of the Southern Freight Association.

Rule 7. Reconsignment or milling in transit will be accorded to such shippers only as conform to these rules.

Application of Rates.

Via St. L. I. M. & S. Ry.

The rates provided herein will apply via St. Louis Iron Mountain & Southern Ry., Belmont, Mo., and Memphis, Tenn., on Grain Products (except Flour, Corn Meal, Chop Feed and Bran in carloads), but not on Grain or Hay reconsigned to Southeastern Territory.

They will also apply on Malt, via Belmont, Mo., when reconsigned to points specified in Malt Item.

Supplement No. 1 to I. C. C. 268.

The Missouri Pacific Railway (St. L., I. M. & S. Ry.),
The Mobile & Ohio Railroad,
The Illinois Central Railroad,
The Louisville & Nashville Railroad,
The Southern Railway (St. Louis Division).

The rates, rules and regulations in this issue are the separate rates, rules and regulations of the initial carrier named and its connections, and are compiled and published by me as Agent of said carrier, and from the separate written declaration of said initial carrier.

Supplement No. 1
—to—
Through Freight Tariff No. 38-E
—Applying on—
Reconsigned Grain, Grain Products and Hay, and Milling in Transit of Wheat, Corn and Oats,
—from—
St. Louis and Carondelet, Mo., and East St. Louis, Ill.,
—to Points in—
Southeastern Territory
as Described Herein.

Effective April 12, 1906.

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326 D. M. Goodwyn,
General Freight Agent,
Louisville & Nashville R. R.,
Louisville, Ky.

W. R. Peabody,
General Freight Agent,
St. L., I. M. & S. Ry. Co. and Leased, Operated and Independent Lines.
St. Louis, Mo.

J. R. Peachy,
Ass't General Freight Agent,
Illinois Central Railroad,
St. Louis, Mo.

R. L. McKellar,
A. F. T. M.,
Southern Railway,
Louisville, Ky.

R. A. Campbell,
Ass't Gen'l Freight Agent,
Southern Railway,
St. Louis, Mo.

J. M. Denyven,
General Freight Agent,
Mobile & Ohio Railroad,
St. Louis, Mo.

W. E. Keepers,
General Freight Agent,
Illinois Central Railroad,
Chicago, Ill.

To I. C. C. April 7, 1906. Compiled by S. Frink, St. Louis, Mo.

Correction.

Correct Rule 3, Section (*b*), to read as follows:

(*b*) Shippers must surrender paid freight bills for the same kind of property as is reconsigned, *i. e.*, Wheat or Corn paid freight bills for products of Wheat or Corn; Wheat paid freight bills for Wheat; Corn paid freight bills for Corn; Oats paid freight bills for Oats; Hay paid freight bills for Hay; Corn or Oats paid freight bills for Feed or Chop.

38-E.

Milling in Transit.

Wheat, Corn or Oats brought from Illinois or the territory west of the Mississippi river to St. Louis, Mo., or East St. Louis, Ill., may be milled at those places and be reshipped, thence via Belmont, Mo., Cairo, Ill., Evansville, Ind., or Louisville, Ky., as Flour, Meal, Hominy, Grits, Bran, Middlings, Shorts, Shipstuffs or Feed, minimum weight 1250 lbs., to destinations in Southeastern Territory at four (4) cents per 100 lbs. or eight (8) cents per barrel, higher than the published rates from Cairo, Ill., or Evansville, Ind. to destination; and Corn Meal in barrels or Sacks and Chop Feed in Sacks C. L. minimum weight 30,000 lbs. at two (2) cents per 100 lbs., or four (4) cents per barrel higher than the published rates from Cairo, Ill. or Evansville, Ind. to destination.

NOTE.—The above milling in transit rates shall not apply on shipments of Flour, in Classes C and F or under special commodity rates, when destined to stations on the Southern Railway (Birmingham Division), in Alabama, Littleton to Hudson, both inclusive, or to stations on the St. Louis & San Francisco R. R., Adamsville to Plantersville, both inclusive.

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Reconsignment of Flour, etc.

The milled products of Grain, as specified under milling in transit, originating beyond, may be reconsigned from St. Louis, Mo., or East St. Louis, Ill., at the rates and under the conditions provided for the same when milled at St. Louis or East St. Louis.

General Rules Governing Milling in Transit and Reconsignment of Flour, Grain and Hay.

Rule 1. Traffic subject to these rules is Flour, Grain and Hay, consigned locally to St. Louis or East St. Louis and reshipped, or that is consigned through these gateways and accorded the privilege of stopping at St. Louis or East St. Louis, for milling in transit,

cleaning, sacking, mixture or handling through elevators, warehouses or railroad yards for any purpose whatever, except that Grain or Hay and products of Wheat or Corn enumerated under Milling in Transit, stopped in railroad yards in St. Louis or East St. Louis for inspection in original cars, under the supervision of the Chairman of the Southern Freight Association, shall be considered through shipments and be handled on the basis of established through rates and divisions.

Rule 2. All milling in transit and reconsignment is to be subject to the supervision of the Chairman of the Southern Freight Association.

Rule 3. (*a*) In order to secure the proportional rate, original paid freight bills or certified copies, as provided herein, must be surrendered to the Chairman of the Southern Freight Association.

If shippers desire to retain possession of the original paid freight bills, such originals can be released by presentation of a copy written in ink, together with the original, to the Chairman of the Southern Freight Association, who will certify the copy, if correct, and cancel the original.

On surrender by the shipper of either the original or the certified copy of paid freight bill, the Chairman will endorse the proportional rate authorized herein on shippers' tickets or bills of lading.

(*b*) Shippers must surrender paid freight bills for the same kind of property as is reconsigned, *i. e.*, products of Wheat or Corn, paid freight bills for products of Wheat, Corn or Oats; Wheat, 328 paid freight bills for Wheat; Corn, paid freight bills for Corn; Oats, paid freight bills for Oats; Hay, paid freight bills for Hay; Corn or Oats, paid freight bills for Feed or Chop; except that Wheat or Corn paid freight bills may be used for their products milled in transit.

(*c*) Flour, Grain or Hay loaded from mills, elevators, warehouses or on tracks in St. Louis shall be rated from St. Louis.

Flour, Grain or Hay loaded from mills, elevators, warehouses or on tracks in East St. Louis shall be rated from East St. Louis.

Rule 4. Paid freight bills, which are not surrendered within six months from the date of their issue, will not be accepted for reconsignment or milling in transit.

Rule 5. Paid freight bills must cover as much weight as is reconsigned. If weight of Flour, Grain or Hay reconsigned or milled in transit exceeds the weights as shown on paid freight bills, St. Louis or East St. Louis proper carload rate will be charged on the excess. Any excess of weight shown on in-bound freight bills over the weight shipped out, may be credited to the shipper, and applied on subsequent shipments.

Rule 6. Waybills covering traffic at these proportional rates must show the point of origin and the Chairman's reconsignment or milling in transit number, and copies of waybills for shipments forwarded under these rules must be furnished to the Chairman of the Southern Freight Association.

Rule 7. Reconsignment or milling in transit will be accorded to such shippers only as conform to these rules.

Application of Rates.

Via St. L. I. M. & S. Ry.

The rates provided herein will apply via St. Louis, Iron Mountain & Southern Ry., Belmont, Mo., and Memphis, Tenn., on Grain Products (except Corn Meal and Chop Feed in carloads), but not on Grain or Hay reconsigned to Southeastern Territory.

They will also apply on Malt, via Belmont, Mo., when reconsigned to points specified in Malt Item,

38-E.

DEFT EX # 12

DEFT EX # 12

FORM 8

Blue Ridge Duplicate

BRD

THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RY. CO.

DATE 1/19 190

E. H. /6 FROM BIG FOUR STATE OF

INITIAL ROAD TO SOUTHERN STATE OF

WAY-BILL { SERIES
NO. 30 32

ROUTE

VIA JUNCTION WITH RWY	VIA JUNCTION WITH RWY	VIA JUNCTION WITH RWY	VIA JUNCTION WITH RWY	VIA JUNCTION WITH RWY

WEIGH THIS CAR AT MARKED CAPACITY OF CAR LBS

STOP THIS CAR AT FOR

Gross, Tare and Net Weight of Carload Freight to be entered in this space, where the car is weighed.

WEIGHED AT

GROSS

TARE

NET SHIPPED

CAR INIT'L CAR No.

TRANSFERRED 190 INTO

INIT'L L&AMS No. 42889 AT

TRANSFERRED 190 INTO

INIT'L No. AT

*When a Through Rate is used and the shipment is to be de-way-billed En route, the Subdivisions must be shown in the Rate Column in Road Order, noting opposite each proportion the initials of the Road to which it accrues.

This Space for Binding	CONSIGNOR. Connecting Line Reference, Original Car and Way-Bill No. and Point of Shipment.	MARKS, CONSIGNEE AND DESTINATION.	No. of Packages	Articles and Classification Conditions. O.R., C.R., Rel., Gtd., Etc.	WEIGHT	Rate and Authority*	FREIGHT	ADVANCES	PREPAID
	Big Four Ohlman, Ill. L-28/1/16 J. F. U.	James F. Umphly Nfy. O. N. Boyd & Co. Gastonia, N. C.		315 Bales 625 345 Hay 275 SL&C	27500Sou	6 39	16 50	Southern Ry.Co. Received Jan. 20, 1916	Local Freight Office E. St. Louis, Ill.

Agents at Junction Stations receiving this Way-bill from Connecting Line must Stamp in the spaces below, in Consecutive Order, the Names of their Stations and Date upon which the Way-bill is received.

1	2	3	4	5	6	Agent at Destination Stamp Herein Date Received
Stamp of Junction forwarding Agent.	Stamp of Junction forwarding Agent.	Stamp of Junction forwarding Agent.	Stamp of Junction forwarding Agent.	Stamp of Junction forwarding Agent.	Stamp of Junction forwarding Agent.	

FORWARD ONE TISSUE COPY OF THIS WAY-BILL TO R. H. VAUGHAN, GENERAL MANAGER, CINCINNATI, OHIO.

(Written across face) 1-1-72-38-20 Deliver only on Presentation of Original Bill of Lading properly endorsed.

Defendant's Exhibits.

329

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Defendant's Exhibit [illegible] Bill of Lading

DEFT EX #13

NORTH-BOUND. SR PIEDMONT AIR-LINE AND ASHEVILLE LINE.

Through Freight Way-Bill from (No. 1497) St Louis To (No. 119) Gastonia NC Date 1/22 1906

Time Loaded ____ Transferred into Initial ____ No. ____ At ____ Date ____ 190__

Person in Charge ____ Route ____ Initial ____ No. ____ At ____ Date ____ 190__

Way-Bill No. EH 1176 Car L&N Car No. 42819

Specified Capacity of Car ____

Through Rate

Def't Ex #13

CONSIGNOR:	Consigned to (Name of Consignee)	Number and Description of Articles	Ashley Quick Number	WEIGHT (Subject to Correction)	CLASS	RATE	Charges and Freight to ____ Total Amount to Point				Advances	Insurance	Total Cost	Collect	Prepaid
							Mileage	Switch Terminals	Prepaid	Total Charges and Freight					
200 x dL	Jno F Marshy								12 75						
3032	Mfg Co	3/4 Rub Strap				15	1650		2 25	3 75		10 45		88 00	
Oklahoma	Cin Boyd	L L C				6						2 50			104 95
Ill.	Gastonia			423 00		1						85 40			
	NC	423 pcs				1 1/2									
		1				7 1/2									
						3 1/2									
						2									
		H 74													

Enter on all Way-Bills Letter and Number of all Special Rates used. When rates are named by telegram or letter, give date and by whom signed. No verbal authority for rates must be recognized.

"If Way-Bill is for prepaid shipment, the prepaid charges and freight should be entered at the "Total" column.

Use these spaces for Live Stock shipments only. Give exact time loaded. U. S. Law, Section 4386, provides that cattle, sheep, swine and other animals must be unloaded, rested and fed within 28 consecutive hours at stations of arrest, and be rested at least 5 consecutive hours. No guaranty accordingly.

DEFT EX ÷ 14

Defendant's Exhibit 14— change [illegible]

Interchange Report

New York Central Lines

Cleveland, Cincinnati; Chicago & St Louis Ry

Record of Cars Delivered or Offered to.....

.....190 Southern Ry.

	Loaded		Empties			
Initial	Initial 1-20	Initial 06.	Number	Contents	Route	Destination
: 42889	LS&MS	Lo				3032
: 26089	Sou.	E				Home
: 25671	CCC	E				Sou out K-1
: 26176	" "	E				" " "
: 44608	" "	E				" " K-13
:						

R. R. Harris,

C. G. Walker,....w

10oo AM 1–20–06

DEFT EX ÷ 15

Defendant's Exhibit 15— lington bill.

Burlington Route

Freight Bill

Consignee S/O NFY Pendelton G Co.

St. Louis Station May 3–1906

Destination.....Via I C T M 6421

To Chicago, Burlington & Quincy Railroad Company, Dr.

Pro 892 For Charges on Articles Way-billed from Tingley, I Via QER

Waybill Reference		Car Initials and Number	Original Point of Ship	Original or
Date	Number			
4/25	27	34634 Q	" Talbott Co.,	

No. of Pkgs	Articles and Mark	Weight	Rate	Freight	Advances	Total
	Oats O R R Prepaid $43.20	36000	12			

Connecting line reference	Received Payment	Agent	Drayage	
	Per.....Cashier	Total to collect		
Original way-bill number	.....190...			

All car/loads shall be subject to a minimum charge for trackage and rental of $1.00 per car for each 24 hours detention, or fractional part thereof, after the expiration of 48 hours from arrival at destination.

Original paid Freight Bills should accompany all Claims for Overcharge, Loss or Damage.

Defendant's Exhibit 16—Reconsignment rate slip.

DEFT EX + 16.

Reconsignment Rate Slip.

St. Louis, Mo., 3/27 190

Sou No. 4004 G. D. R-C. No. 91

Commodity Hay
Consignor St. L N. & G. Co.
To
Consignee C. A. Taylor
Point of Origin By Cabin, I. T.
Destination Brunswick, Ga.
Car No. 30049. Initial P. & L. E.

Through Rate and Divisions

Paid	Per 100 Lbs. Class C.	Per 100 Lbs. Class D.	Per Bbl.
To E. St. L.		21	
To River Crossing		7	
South.....		18	
Arbitrary.....			
Through Rate		46	

Correct: S. Frink Chm.

Per J.....

Defendant's Exhibit 17—Receipt.

DEFT EX + 17

St. Louis, Mo. 3/26 1906.

Received in Good Order From
St. Louis Hay & Grain Company.,
315 Merchants Exchange

By Southern

To be delivered to St. Louis Hay & Grain Co.,

At Chattanooga, Tenn.

Via Southern

Marks	Articles	Weight
P. & L. E. 30049	(1) Car Hay	20000
	Charges to follow	
	S/O Nfy. C. A. Taylor	
	Brunswick, Ga.	
	Frt. follow	
	Via Sou. R. R.	
	C. G. Walker,	
538	Agt.	
(3)	3/26	

DEFT EX #18

[BILL OF LADING.] Form 467. Revised

SOUTHERN RAILWAY COMPANY.

NOT NEGOTIABLE.

T. C. POWELL, Freight Traffic Manager, Washington, D. C. R. A. HILL, General Freight Agent, Atlanta, Ga.
LEE McCLUNG, Asst'l Freight Traffic Manager, Louisville, Ky. J. A. HOOPER, Freight Claim Agent, Washington, D. C.

(If the shipper may elect to accept the conditions printed on the front ___ and/or back hereof, and the reduced rates applying thereunder, or may, as provided below, receive the carriage at the full regular or carrier's tariff rates.

If the shipper elects not to accept the said reduced rates and conditions, he should so notify the agent of the receiving carrier, in writing, at the time the property is offered for shipment, and if he does not give such notice it will be understood that he desires the property carried subject to the Standard Bill of Lading conditions in order to secure the reduced rate therefor. Property carried not subject to the conditions of the Standard Bill of Lading will be on the carrier's lowest rates applicable only to property carried by Common Law and by the Laws of the United States and of the several states in so far as they apply. Property that will be carried only at personal risk of owner, higher ranking to a minimum increase of one (1) and one hundred pounds) than if shipped subject to the conditions of the Standard Bill of Lading.)

Received from the SOUTHERN RAILWAY COMPANY 3/27 6
at St. Louis Hay & Grain Co., Station, 190
East St. Louis. Ill.
from Order Notify St. Louis Hay & Grain Co.,

MARKS AND NUMBERS.	ARTICLES.	WEIGHT. (Subject to correction.)
C. A. Tayler	One (1) car Hay.	20000.
Consignee Brunswick, Ga.		
	P. & L. E. 30049	
Place	R. C. No. : per : per	
County	Paid :100 : bbl	
State	T.E.St.L. :21 :	
Consignee's address for information only, and not for purposes of delivery	River Crossing:11 :	
	South :18 :	
	Arbitrary : :	
	Through : :	
	Rate :46 :	
Route		

Receive, carry and deliver the articles described above, subject to the conditions on the face ___ and/or back hereof; (see "B" above).

Charges advanced, $ _____ Shipper, or owner or agent for the owner.

and _____ ? _____ Agent.
(The signature of the Agent here acknowledges only the receipt of the property, and the charges advanced, if any.)

B. The Blank Spaces Below Must Not Be Filled Up by the Shipper.

Big Cobin, I. T

The rate of freight from _____ to _____ is the charge

PER ONE HUNDRED POUNDS.

1st Class	2d Class	3d Class	4th Class	5th Class	6th Class	7th Class	Class A	Class B	Class C	Class D	Class E	Class F	Class G	Per Barrel	Per

_____ Agent.
(The signature of the Agent here acknowledges only the rate given.)

Received $ _____ to apply in prepayment of the charges on the property described above.

_____ Agent.
(The signature of the Agent here acknowledges only the amount prepaid.)

Defendant's Exhibit 19—Receipt.

DEFT EX + 19

St. Louis, 3/26 1906.
Received In Good Order From
St. Louis Hay & Grain Company
315 Merchants Exchange.

By Southern

To be delivered to: St. Louis Hay & Grain Co.,

At Chattanooga, Tenn.

Via Southern

Mark		Weight
P. & L. E.		
300491	1 car Hay	
	Charges to follow	
	3/29	
Sepd	3/27	
	C. G. Walker,	
5.30	Agt.	
	3/26	

DEFT EX #20

NORTH-BOUND. SR

PIEDMONT AIR-LINE AND ASHEVILLE LINE.

Through Freight Way-Bill from (No. 449 Cook St Louis To (No. 62) Savannah Ga. Date 3/29 190

Transferred into { Initial No. At Date 190

Time Loaded

Person in Charge Route

Through Bill

DEFT EX #20

Car Initial	Car Number	Contents and Final Destination	Number and Description of Articles	Railroad's Class Number	WEIGHT	CLASS	RATE	Charges and Freight to				Sleeper	Insurance	Terminal	Collect	Prepaid
								Origin	Other Charges	Freight	Total Charges and Freight					
[illegible]																
Oct 1961		1/0 Oft	C A Day Jr & C		220 80		6 1/6 11		3 00							
82 980		Do	Day				11 6			7000						
Fruits											10 20					
912												1420				
Beg Cabin													2320		4 80	50 00
O T																

(12)

482

"X" Enter on all Way-Bills Letter and Number of all Special Rates used. Where rates are named by telegram or letter, give date and by whom signed. No verbal authority for rates must be recognized.

"If Way-Bill is for prepaid shipment, the prepaid charges and freight should be entered in the "Total" column.

Instructions for Shipping Live Stock.—Use these spaces for Live Stock shipments only. Give exact time loaded. At N. Y., Low, Section 4386, provides that cattle, sheep, swine and other animals must be unloaded, watered and fed within 28 consecutive hours at expense of owner, and be rested at least 5 consecutive hours. No general responsibility

DEFT EX #21

Defendant's Exhibit 21—Bill of lading.

#21

6-9-08. 19 M. blks. (BILL OF LADING.) 980 Form 415. (Revised 8-1-1901.)

SOUTHERN RAILWAY COMPANY.

L. GREEN, Fr't Traffic Manager, Washington, D. C.
R. L. McKELLAR, Ass't Fr't Traffic M'g'r, Louisville, Ky.

G. R. BROWDER, Gen'l Fr't Ag't, Atlanta, Ga.
J. J. HOOPER, Fr't Claim Ag't, Washington, D. C.

NOT NEGOTIABLE.

The shipper may elect to accept the conditions printed on the face and / or back hereof, and the reduced rates applying thereunder, or may, at pur-
chased before requires the carriage of the property at carrier's liability
If the shipper elects not to accept the said reduced rates and conditions, he should so notify the agent of the receiving carrier, in writing, at the time his
property is offered for shipment, and if he does not give such notice it will be understood that he desires the property carried subject to the Standard Bill of
Lading conditions in order to secure the reduced rate thereon. Property carried not subject to the conditions of the Standard Bill of Lading will be at the car-
rier's liability, limited only as provided by Common Law and by the Laws of the United States and of the several States, so far as they apply. Property thus
carried will be charged twenty (20) per cent. higher (subject to a minimum increase of one (1) cent per hundred pounds) than if shipped subject to the condi-
tions of the Standard Bill of Lading.

Received by the SOUTHERN RAILWAY COMPANY

at 1961 : *Station,* 3/29 *19*06

from St. Louis Hay & Grain Co.,

The property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and de-
stined as indicated below, which said carrier agrees to carry to said destination, if on its own road, or otherwise to deliver to another carrier on the route to said
destination.

In consideration of the rate charged, under the conditions of this Bill of Lading, it is mutually agreed as to each carrier, severally but not jointly, of all
or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that
every service to be performed hereunder shall be subject to all the conditions, whether printed or written, on the face or back hereof, all of which are agreed to
by the shipper as owner or agent for the owner and accepted for himself or his assigns as just and reasonable.

ORIGINAL

MARKS AND NUMBERS:	ARTICLES.	WEIGHT. (Subject to Correction.)
	Hay	20000
Consignee S/O Nfy.	P. & L. E. 30049	
C.A.		
Taylor Jr	Frink 91214	
	Big Cobin, I.T.	
DESTINATION. Place Brunswick,		
County		
State Ga.	To Louis	7
Consignee's address as information only, and not for purposes of delivery.	South	18 18
	thro. 25¢	
Route		

Receive, carry and deliver the articles described above, subject to the conditions on the face and / or back hereof. (See "B" above.)

Charges advanced, $ Copy not negotiable. Shipper or owner, or agent for the owner.

and $ Agent.

(The signature of the Agent here acknowledges only the receipt of the property, and the charges advanced, if any.)

The Blank Spaces Below Must Not Be Filled Up by the Shipper.

The rate of freight from to in cents:

PER ONE HUNDRED POUNDS.														Per Barrel	Per
If Three 1st Class	If 1st Class	If 2d Class	If 3d Class	If 4th Class	If 5th Class	If 6th Class	If Class A	If Class B	If Class C	If Class D	If Class E	If Class F	If Class G	If Class P	If SPECIAL

Agent.

(The signature of the Agent here acknowledges only the rate given.)

Received $ to apply in prepayment of the charges on the property described above.

Agent.

(The signature of the Agent here acknowledges only the amount prepaid.)

DEFT EX #22

Form 25.
Revised 6-10-'04.

ASHVILLE LINE
ROUTES.

Office of the Manager.

File .....

STATEMENT.

System Cars on Foreign Lines
Foreign " " System

Compiled ..... 190..
By .....

Authority .....

PORT	Steamer	To Sail	Allotment in Gross Tons as per Report Dated	BOOKINGS														Still Required in Gross Tons	REMARKS
				By	Date	Contract No.	Engagement No.	ARTICLES		Gross Tons		Total Tons							
	Atlantic Coast Line.	Central of Ga.	Erie	Georgia	Ill. Central	L and N	N Y C & H R	Penna	Seaboard	Wabash								Total—All Roads	
	So Ry on A. C. L. / A. C. L. on So Ry	So Ry on C of G / C of G on So Ry	So Ry on Erie / Erie on So Ry	So Ry on Ga. / Ga. on So Ry	So Ry on I. C. / I. C. on So Ry	So Ry on L & N / L & N on So Ry	So Ry on N Y C / N Y C on So Ry	So Ry on Penna / Penna on So Ry	So Ry on S A L / S A L on So Ry	So Ry on Wab / Wab on So Ry								System Cars on Foreign Lines	Foreign Cars on System
April 30-'06	662 985	323 562	125 365	164 146	391 1072	341 911	117 533	638 1457	553 743	150 231								15,799	26,313
March 31	801 1047	422 837	126 311	158 169	509 1067	396 1222	163 457	787 1552	625 738	110 202								16,529	27,879
Feby 28	762 726	489 857	150 288	187 171	494 1037	324 1057	137 433	799 1902	728 581	91 189								16,728	25,564
Jany 31	709 574	454 656	194 235	214 147	632 1122	371 1071	171 286	812 999	499 519	146 163								16,771	22,422
Dec 1'-05	999 667	436 713	204 165	272 165	614 945	498 787	224 258	1175 965	527 601	156 156								16,922	18,873
Sept 25	636 422	419 481	135 102	228 150	352 678	450 500	222 92	1234 714	359 370	101 51								16,700	12,617
Aug 31	547 545	376 590	113 75	186 144	249 564	322 575	149 119	1148 678	270 283	80 45								12,220	12,158
" 1	493 507	289 558	87 90	142 219	242 722	401 457	130 104	765 529	289 323	47 29								10,735	12,212
July 1	438 467	288 536	125 110	114 193	265 630	348 462	120 84	918 575	261 317	55 37								10,274	11,297
May 31	381 585	188 744	116 134	134 194	231 801	289 527	98 151	712 967	251 417	70 52								10,026	14,190
" 1	466 770	240 415	140 180	122 165	284 677	471 599	150 144	704 1040	288 290	71 87								14,342	16,502
April 1	556 881	351 610	196 165	224 181	356 1105	444 700	164 195	798 1035	521 570	115 70									

Bill of Exceptions.

340

280

341 DEFT. EX. #22A.

Defendant's Exhibit 22A—Statement Showing Short Line Mileage to Atlanta.

Short Line Mileage from St. Louis, Cairo, Evansville, Louisville, and Cincinnati to Atlanta, Ga., via the Routes Indicated.

East St. Louis to Atlanta—via L & N—N C & St L:

To Evansville	162 miles
Nashville	157
Chattanooga	151
Atlanta	138
Total	608 miles

Evansville to Atlanta—via L & N—N C & St L:

L & N	157 miles
N C & St. L.	289
Total	446 miles

Louisville to Atlanta—Sou Ry—C N O & T P—W & A:

To Danville	94 miles
Chattanooga	222
Beyond	138
Total	454 miles

Cincinnati to Atlanta—via C N O & T P—W & A:

To Chattanooga	338 miles
Beyond	138
Total	476 miles

No. 2.

Cairo to Atlanta—

Via I C—Martin and N C & St L:

I C to Martin	60 miles
N C & St L beyond	430
Total	490 miles

Via I C—Nashville and N C & St L:

I C to Nashville	196 miles
N C & St L beyond	289
Total	485 miles

281

342 Via I C—Sou Ry and Emory Gap:

I C to Nashville	196 miles
To Chattanooga	151
Beyond	138
Total	485 miles

Memphis to Atlanta—
Via K C M & B and Sou Ry:

To Birmingham	251 miles
Sou Ry	167
Total	418 miles

East St. Louis to Cairo	151 miles
East St Louis to Evansville	162 miles

DEF'T EX. #23.

Defendant's Exhibit 23—*Statement.*

Statement Showing the Production of Hay in New England States, New York, Pennsylvania and Maryland for Years as Shown.

Year.	New England.	New York.	Pennsylvania.	Maryland.
1899	3,555,646	4,530,307	3,068,970	3,119,781
1900	3,473,081	3,351,991	2,672,561	302,292
1901	.....	.....	.....	.....
1902	4,857,687	6,718,743	3,693,002	301,123
1903	4,210,330	6,064,919	3,901,858	366,000
1904	4,452,984	6,480,800	4,499,425	409,447
1905	4,668,266	6,132,932	4,608,033	376,814

Statement Showing the Production of Hay, Wheat, Corn and Oats and Average Price Prevailing in the States Named Below for the Period, 1898 to 1905 inclusive.

State	Commodity	Year 1898	Average Price	Year 1899	Average Price	Year 1900	Average Price	Year 1901	Average Price	Year 1902	Average Price	Year 1903	Average Price	Year 1904	Average Price	Year 1905
				Hay Per Ton						Grain Per Bushel						
Ohio	Hay	.....	5.75	2,133,699	8.95	1,652,797	11.05	.....	8.72	3,959,022	10.20	3,892,024	10.10	3,880,238	9.25	3,921,753
	Wheat	42,103,173	.66	89,998,006	.64	8,523,876	.71	33,532,551	.71	36,533,379	.71	28,303,515	.80	17,563,478	1.10	32,197,710
	Corn	102,828,439	.27	99,048,816	.30	106,890,188	.34	3,077,138	.57	121,608,512	.42	88,095,757	.47	99,628,555	.46	112,399,396
	Oats	27,724,160	.24	32,945,976	.25	40,340,534	.26	35,217,378	.39	46,409,791	.32	30,752,419	.36	49,733,541	.32	37,993,108
Indiana ..	Hay	.....	5.60	2,093,376	7.80	1,663,452	9.75	.....	9.28	2,635,215	8.67	2,600,199	8.56	2,399,052	8.58	2,539,875
	Wheat	38,426,049	.63	25,361,175	.64	6,411,702	.70	31,932,890	.70	35,484,448	.68	23,994,030	.78	12,525,995	1.06	35,351,464
	Corn	129,154,572	.25	141,852,594	.27	153,200,800	.32	87,753,541	.55	171,332,142	.36	142,380,886	.36	143,376,852	.41	187,130,623
	Oats	31,938,668	.23	34,301,248	.23	44,866,035	.23	39,633,022	.38	48,565,685	.28	29,457,705	.32	42,358,732	.30	47,432,822
Illinois....	Hay	.....	5.90	2,365,710	7.75	2,119,419	8.40	.....	11.20	4,121,054	8.87	4,273,258	8.33	3,736,049	8.66	3,597,321
	Wheat	19,334,348	.60	12,665,410	.63	17,982,068	.64	30,052,053	.69	32,601,932	.57	16,571,940	.75	21,542,421	1.01	29,951,584
	Corn	199,959,810	.25	247,150,332	.26	264,176,226	.32	198,025,713	.57	372,436,416	.36	264,087,431	.36	344,133,680	.39	382,752,065
	Oats	88,303,579	.23	127,278,948	.23	133,642,884	.23	112,531,903	.40	153,450,423	.23	98,525,762	.32	117,341,952	.30	132,779,762
Missouri ..	Hay	.....	5.80	3,094,394	6.25	2,768,015	6.95	.....	11.99	4,290,860	6.39	4,745,312	6.68	4,398,632	6.62	3,094,004
	Wheat	14,104,454	.59	11,398,702	.62	18,846,713	.63	31,137,097	.69	56,266,494	.58	22,194,614	.71	27,163,141	.96	28,022,338
	Corn ..	154,731,486	.27	162,915,064	.30	180,710,404	.32	66,436,376	.67	264,232,605	.33	202,839,584	.34	151,522,643	.44	203,294,708
	Oats	15,866,168	.23	20,299,350	.24	24,095,373	.23	10,197,746	.43	27,816,165	.28	17,401,783	.32	16,265,549	.34	19,684,884
Kansas ...	Hay	.....	5.25	5,155,908	3.50	4,031,461	4.55	.....	7.67	3,211,193	4.31	2,865,140	4.81	2,998,061	4.38	2,726,979
	Wheat	64,939,412	.50	36,468,044	.52	82,488,655	.55	99,079,304	.59	45,827,495	.55	87,249,557	.59	65,019,471	.89	77,001,104
	Corn	132,842,048	.26	237,621,222	.25	163,870,630	.32	61,506,034	.63	222,805,621	.34	171,687,014	.36	134,609,669	.41	193,275,836
	Oats	26,689,248	.22	39,129,410	.22	43,063,943	.23	17,332,410	.43	31,529,128	.30	26,011,753	.30	16,955,087	.33	23,248,223
Kentucky .	Hay	.....	9.10	394,963	10.40	390,064	11.35	.....	12.13	720,294	11.30	722,995	12.07	668,829	11.07	599,343
	Wheat	14,465,436	.62	8,201,575	.66	12,442,846	.69	11,611,196	.72	7,511,536	.74	7,728,235	.81	7,349,329	1.09	8,809,955
	Corn	85,177,243	.27	55,392,687	.37	69,267,224	.40	49,575,178	.61	90,093,357	.42	82,545,546	.56	86,815,580	.49	94,893,638
	Oats	9,466,061	.27	8,194,806	.32	9,309,295	.32	5,379,046	.41	5,758,591	.36	4,640,326	.41	5,485,272	.40	5,487,559
Iowa	Hay	.....	4.05	5,025,974	5.30	5,006,470	6.80	.....	7.67	5,211,232	6.50	5,631,852	5.46	5,074,362	5.36	5,165,198
	Wheat	22,189,624	.52	18,195,489	.55	21,798,223	.59	21,048,101	.60	14,869,245	.55	12,531,304	.62	11,266,220	.90	13,683,003
	Corn	254,999,850	.23	242,249,841	.23	305,859,948	.27	230,264,550	.52	297,686,016	.33	229,218,220	.38	303,039,266	.33	305,112,376
	Oats	123,428,126	.24	126,985,749	.19	130,572,138	.20	122,304,564	.36	124,738,337	.25	84,133,944	.29	122,323,200	.25	131,115,180
Tennesee..	Hay	.....	9.50	318,786	11.25	313,432	11.80	.....	12.31	514,151	11.80	558,497	12.29	580,907	12.01	543,114
	Wheat	13,980,080	.67	8,298,727	.78	11,696,088	.79	13,094,365	.74	6,050,743	.76	7,693,070	.84	9,298,417	1.11	6,348,600
	Corn	76,467,742	.29	59,997,760	.39	56,997,880	.49	45,129,588	.65	73,081,329	.47	75,283,778	.49	80,890,025	.50	77,207,912
	Oats	6,755,038	.28	5,326,244	.32	5,810,166	.35	3,501,330	.25	3,219,028	.42	3,132,512	.42	3,286,937	.37	3,052,341
Georgia ..	Hay	.....	11.75	158,466	13.15	190,237	12.75	.....	14.33	119,789	13.40	136,110	15.15	136,574	15.14	132,081
	Wheat	2,606,360	.98	2,021,225	.98	5,011,133	.95	3,042,167	.94	1,707,186	.98	1,859,740	.96	2,564,056	1.26	2,106,556
	Corn	26,586,648	.48	32,494,790	.50	34,119,530	.57	37,857,580	.82	35,093,979	.73	46,078,391	.69	47,334,713	.71	47,255,164
	Oats	7,196,449	.48	4,291,857	.48	7,010,040	.49	4,390,331	.67	2,930,544	.53	3,482,865	.55	3,486,969	.55	3,522,075
Alabama ..	Hay	.....	9.25	82,746	11.40	94,061	10.55	.....	12.07	68,330	11.61	100,786	12.39	96,396	12.13	104,966
	Wheat	519,708	.90	431,186	.89	916,351	.89	1,155,256	.88	632,916	.93	1,020,410	.95	1,060,138	1.15	1,041,082
	Corn	39681,680	.41	33,015,120	.47	29,355,942	.58	27,903,161	.77	23,223,623	.67	41,736,163	.57	41,877,165	.60	42,971,548
	Oats	3,383,274	.41	3,012,070	.43	4,380,754	.44	3,181,880	.64	2,320,141	.55	3,396,779	.54	2,947,026	.54	3,165,574
South Carolina	Hay	.....	9.50	176,112	10.30	192,453	11.50	.....	10.98	75,564	11.25	89,526	11.72	92,880	12.18	84,479
	Wheat	1,181,709	.94	963,762	.99	2,142,828	1.01	2,280,608	.98	1,498,969	1.02	1,756,696	1.01	2,267,401	1.26	1,942,356
	Corn	17,519,070	.46	16,713,189	.50	13,129,137	.64	11,885,167	.84	18,988,705	.69	18,618,064	.69	22,189,837	.70	20,480,860
	Oats	4,208,118	.45	3,023,976	.47	4,023,149	.48	3,718,862	.62	2,836,687	.59	2,849,686	.59	3,271,846	.60	3,056,397
North Carolina.	Hay	.....	9.50	195,789	10.10	176,680	11.20	.....	10.80	190,274	12.25	207,187	13.42	220,499	14.56	201,013
	Wheat	5,274,645	.78	3,495,598	.82	5,960,803	.82	6,762,118	.82	3,055,757	.92	3,228,606	.97	4,912,561	1.19	3,975,278
	Corn	34,070,400	.43	31,953,168	.47	29,790,180	.57	30,641,688	.73	37,622,880	.60	38,594,585	.61	40,705,478	.62	37,596,331
	Oats	6,338,618	.37	4,787,208	.41	5,046,717	.45	3,648,154	.51	3,024,416	.51	2,470,494	.52	3,252,809	.52	3,118,370
Virginia...	Hay	.....	8.50	588,063	10.25	589,133	13.30	.....	12.01	507,288	13.58	602,492	13.73	637,760	12.55	572,607
	Wheat	10,626,112	.66	6,330,450	.69	9,421,932	.72	9,680,192	.73	3,635,494	.79	6,999,646	.84	7,257,065	1.09	8,418,672
	Corn	38,756,564	.35	34,890,900	.38	28,183,760	.49	40,903,456	.59	41,345,656	.52	39,740,702	.53	42,899,913	.59	43,514,874
	Oats	6,880,641	.29	5,145,518	.33	5,167,568	.37	3,717,863	.42	3,886,295	.42	2,850,100	.43	3,878,412	.43	3,140,970
Arkansas..	Hay	.....	6.75	205,491	8.65	228,580	8.85	.....	11.72	129,614	9.40	127,022	9.48	135,183	9.82	130,664
	Wheat	2,335,036	.58	1,953,361	.64	2,689,418	.65	3,126,860	.78	2,245,889	.67	1,922,578	.78	2,198,507	1.01	1,564,808
	Corn	45,365,220	.29	48,087,140	.38	45,225,947	.43	18,702,122	.81	50,665,042	.49	48,212,663	.51	48,332,614	.53	38,323,738
	Oats	7,229,629	.29	5,964,442	.34	7,038,663	.35	3,136,131	.57	5,048,400	.41	4,225,511	.44	4,795,965	.43	3,902,898

ment Showing Hay Rates from Various Points, Showing Rates Made on Basis Proportional Figures in Different Directions and Territories.

In Effect—June 1904

From	To	Mileage		Rate		Nature of Rate	Rate per Ton per Mile
				4			
St. Louis.	Atlanta	Via Ev.	608	24	28	Proportional	.92
St. Louis.	Atlanta	Via Lv & S Ry	739	10	28	"	.79
.....	Atlanta	Via Ev.	693	24 6½	34	"	1.00
Haute ..	Atlanta	Via Ev.	555	24 6	30½	"	1.30
nnes	Atlanta	Via Ev.	498	24 9½	30	"	1.20
napolis ..	Atlanta	Via Lv.	564	24 14½	33½	"	1.19
as City ..	Atlanta	Via Mfs.	905	20	34½	"	.76
as City ..	Memphis	.....	487		14½	"	.60
ouis	Paris, Tex.	.....	585		29½	Prop. or local	1.00
ouis	Texarkana, Ark.	.....	400		19	Proportional	.77
nnati . ..	Macon, Ga.	.....	563		24	Local	.83
go	New York	.....	912		30	Local	.66
ouis	Cairo	.....	200		10	By river	1.00

Proportional rate of 4c per 100 E. St. Louis to Cairo—a distance of 151 miles—figures 0 mills per ton per mile.

DEFT EX + 24.

Defendant's Exhibit 24—Statement.

Statement of Through Billed and Reconsigned Hay From East St. Louis to the Southeast, Carolinas and to Nashville For Three Years.

	Pounds	Number Cars
.....	35,588,500	1617
.....	38,639,500	1756
.....	26,740,600	1215

Number of cars averaged 22,000 pounds to the car.

L-5/14

Filed May 16th, 1906,
Daniel Hogan,
Clerk.

Defendant's Exhibit 25—Receipts and shipments of hay.

DEFT EX + 25.

Receipts and Shipments of Hay in Tons at St. Louis For Last Four Years.

	Receipts	Shipme
1902	213,224	89,0
1903	298,246	114,4
1904	269,560	119,9
1905	246,945	90,1

Receipts of Hay in Tons at Principal Primary Markets for Last Four Years.

	1902	1903	1904	190
St. Louis	213,224	298,246	269,560	246,9
Cincinnati	161,893	102,091	106,371	131,2
Indianapolis	24,204	.....	25,152	1,8
Cleveland	62,632	72,367	148,863	53,7
Chicago	220,225	235,747	252,370	245,6
Kansas City	146,320	135,320	128,040	133,1
Peoria	31,596	41,560	37,334	2,5
Minneapolis	29,471	34,296	37,898	31,2
Milwaukee	.....	20,752	21,247	26,0

Taken from 1904 and 1905 Annual Statements of Merchants' Exchange of St. Louis.

Defendant's Exhibit 26—Statement.

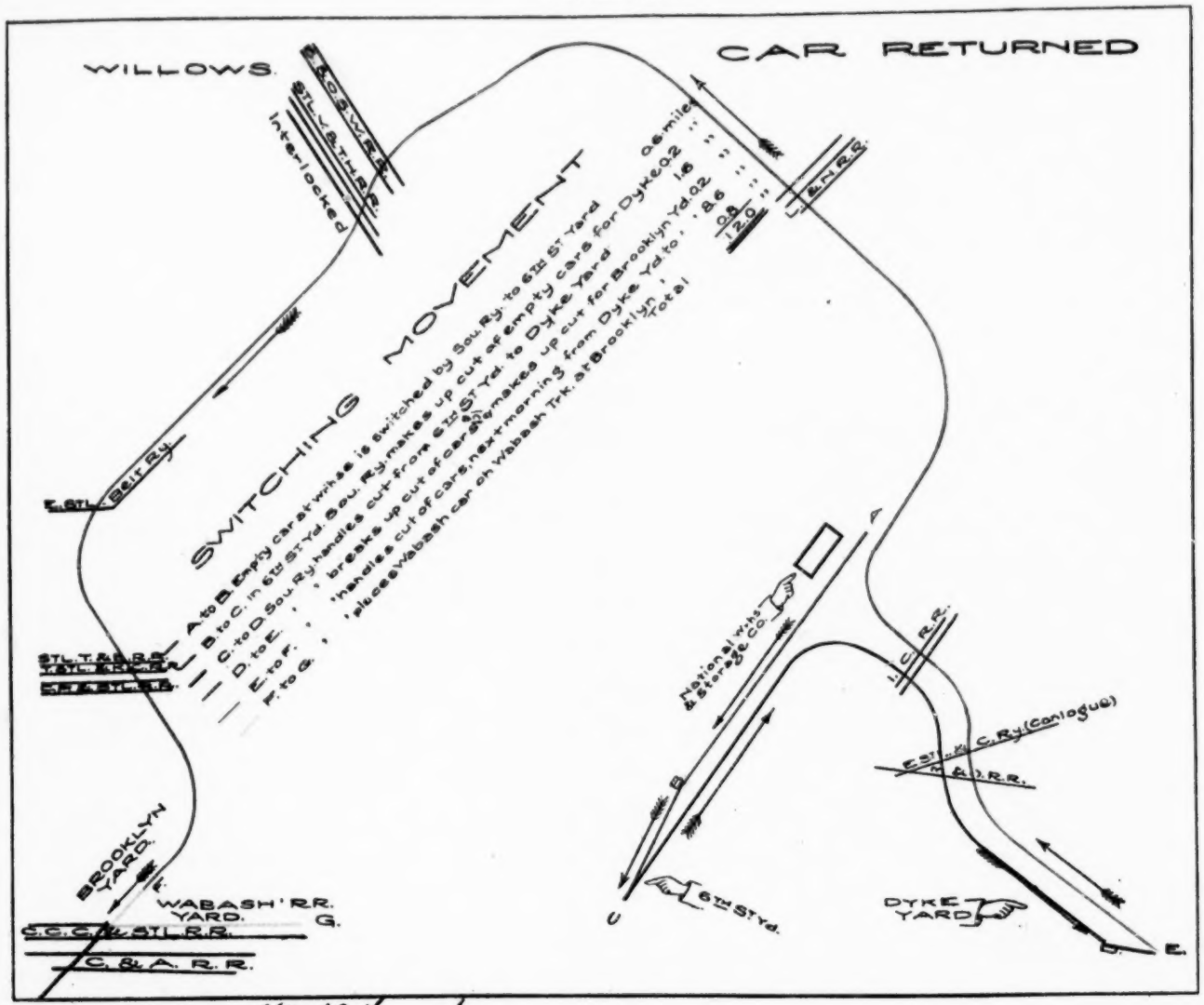
DEFT EX + 26.

Movement of Hay Over the Illinois Central Railroad From and Through East St. Louis for Six Months Ending December 31st, 1905.

	Cars	Weight	Average per c
Reconsigned Movement	113	2,455,380	21700
Through Movement	436	9,666,130	22100

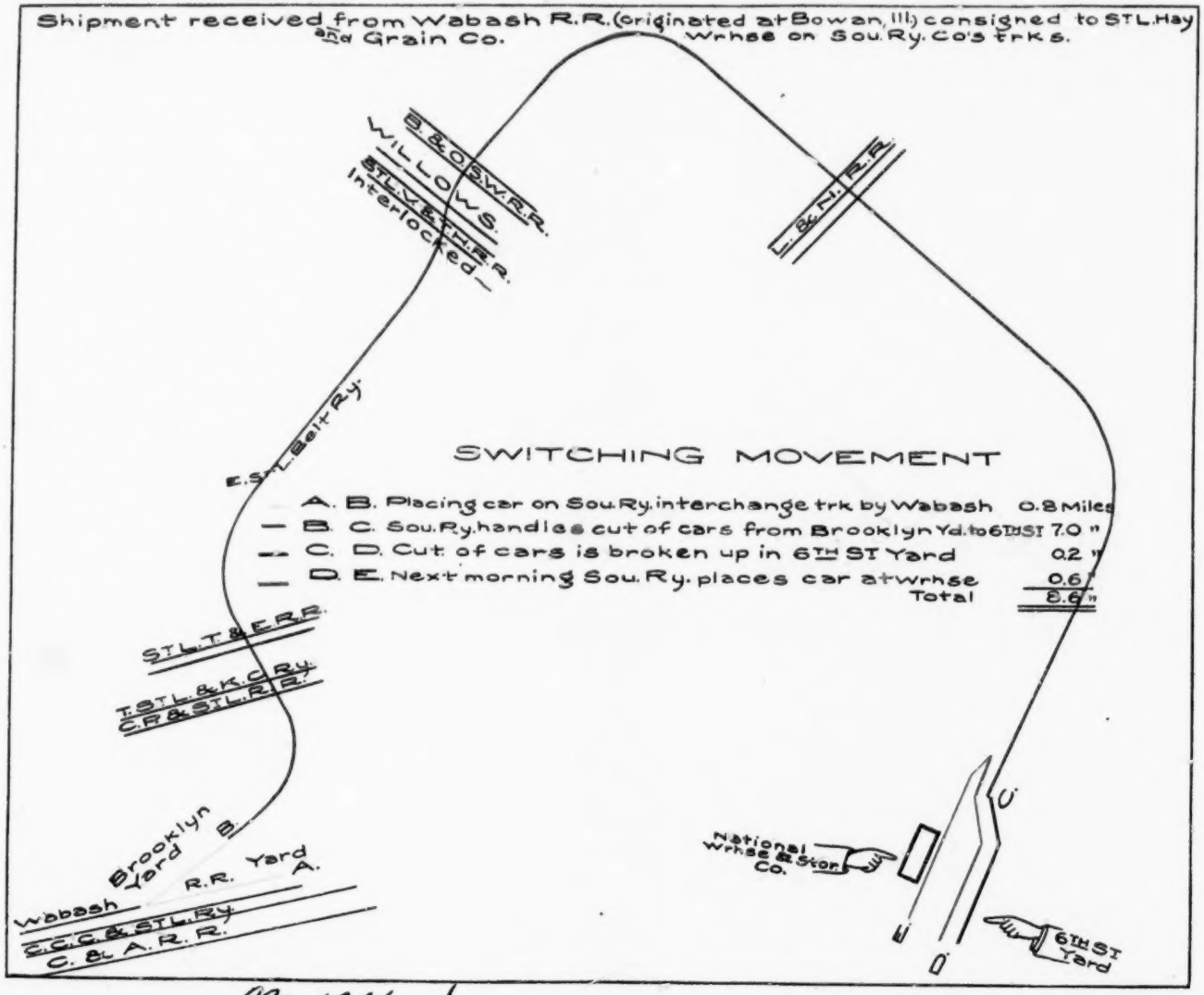
R. A. Campbell,
Asst. General Freight Agent.

(Here follow maps marked pp. 347, 349, 351, 353, and 355.)


WILLOWS.
CAR RETURNED
SWITCHING MOVEMENT
A to B. Empty car at wharf is switched by Sou. Ry. to 6TH St Yard 0.6 miles
B to C. in 6TH St Yd. Sou. Ry. makes up cut of empty cars for Dyke 0.2 " "
C to D Sou. Ry. handles cut from 6TH St Yd. to Dyke Yard 1.6 " "
D. to E. " " breaks up cut of cars & makes up cut for Brooklyn Yd 0.2 " "
E to F. " " handles cut of cars next morning from Dyke Yd to " 8.6 " "
F. to G. " " places Wabash car on Wabash Trk. at Brooklyn Total 12.0 " "
Interlocked
E. St. L. Belt Ry
BROOKLYN YARD.
WABASH R.R. YARD.
T.H. & I. R.R.
C. & A. R.R.
National Wks & Storage Co.
6TH St Yd.
DYKE YARD
E. St. L. & C. Ry (Carlogue)
A
B
C
D
E
F
G

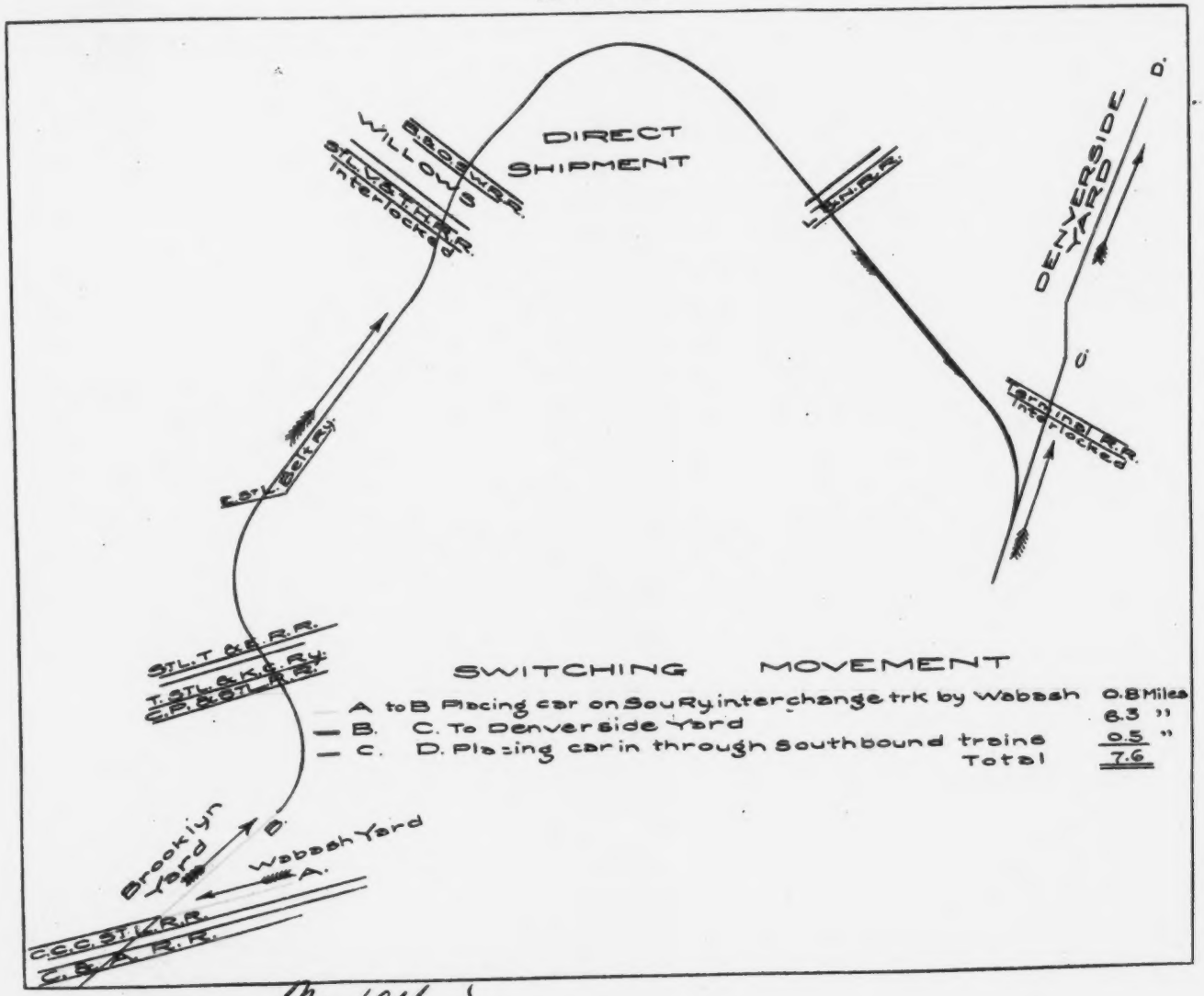
No. 104.
Southern Ry. Co.
v.
St. Louis S.W. Ry. Co.
} p. 347.

DEPT EX #28


Shipment received from Wabash R.R. (originated at Bowan, Ill) consigned to ST L. Hay and Grain Co. Wrhse on Sou. Ry. Co's trks.
B. & O. S.W.R.R.
WILLOWS.
ST L. E. T. H. R.R.
Interlocked
C. & E. I. R.R.
E. St. L. Belt Ry.
SWITCHING MOVEMENT
A. B. Placing car on Sou. Ry. interchange trk by Wabash 0.8 Miles
B. C. Sou. Ry. handles cut of cars from Brooklyn Yd. to 6TH ST 7.0 "
C. D. Cut of cars is broken up in 6TH ST Yard 0.2 "
D. E. Next morning Sou. Ry. places car at wrhse 0.6 "
Total 8.6 "
ST L. T. & E. R.R.
T. ST L. & K. C. Ry.
C. R. & ST L. R.R.
Brooklyn Yard B.
R.R. Yard A.
Wabash
C. C. C. & ST L. Ry.
C. & A. R.R.
National Wrhse & Stor Co.
C
6TH ST Yard

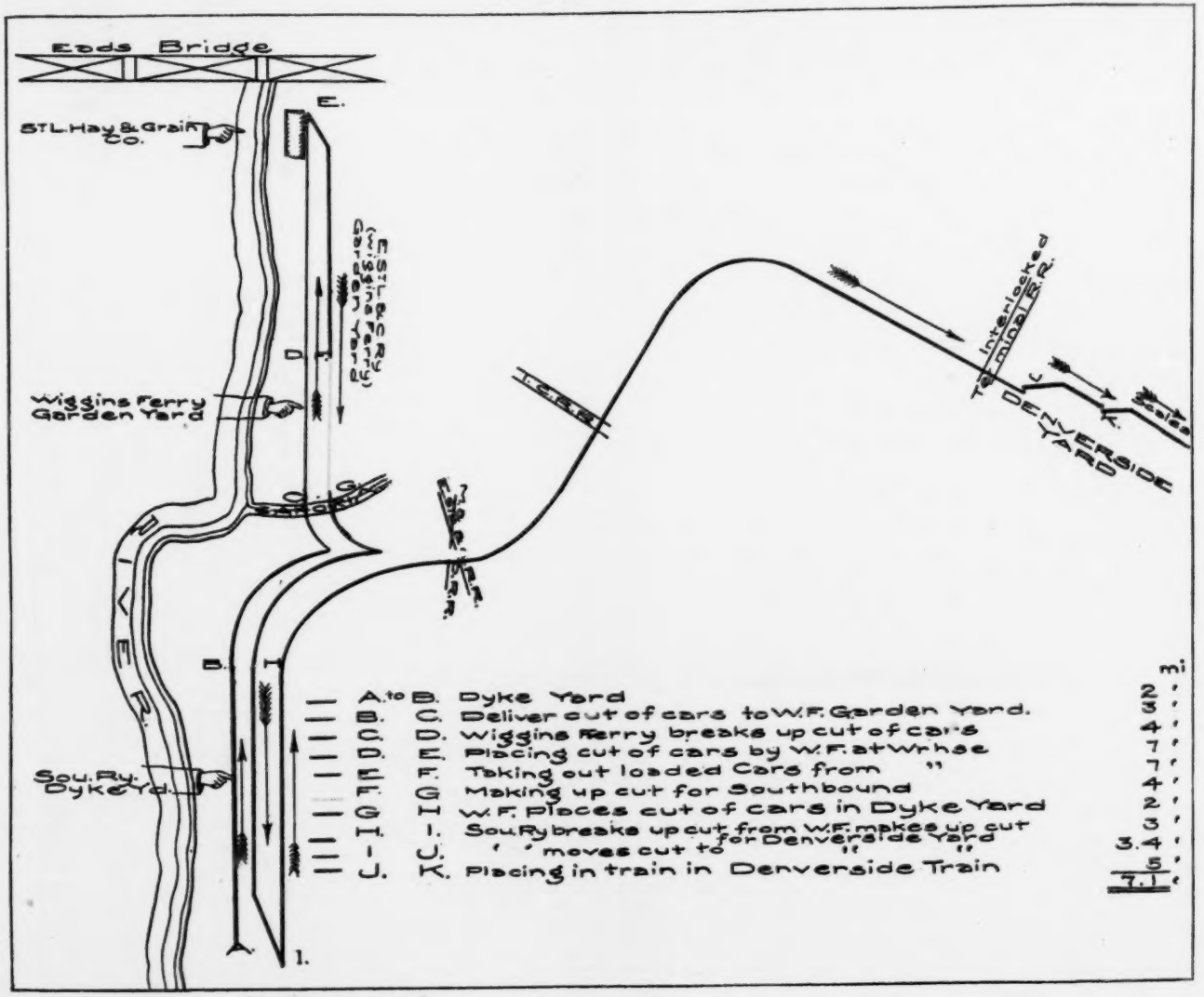
No. 104.
Southern Ry. Co.
Ill. Ry. Co. } p. 349

DEFT EX +29



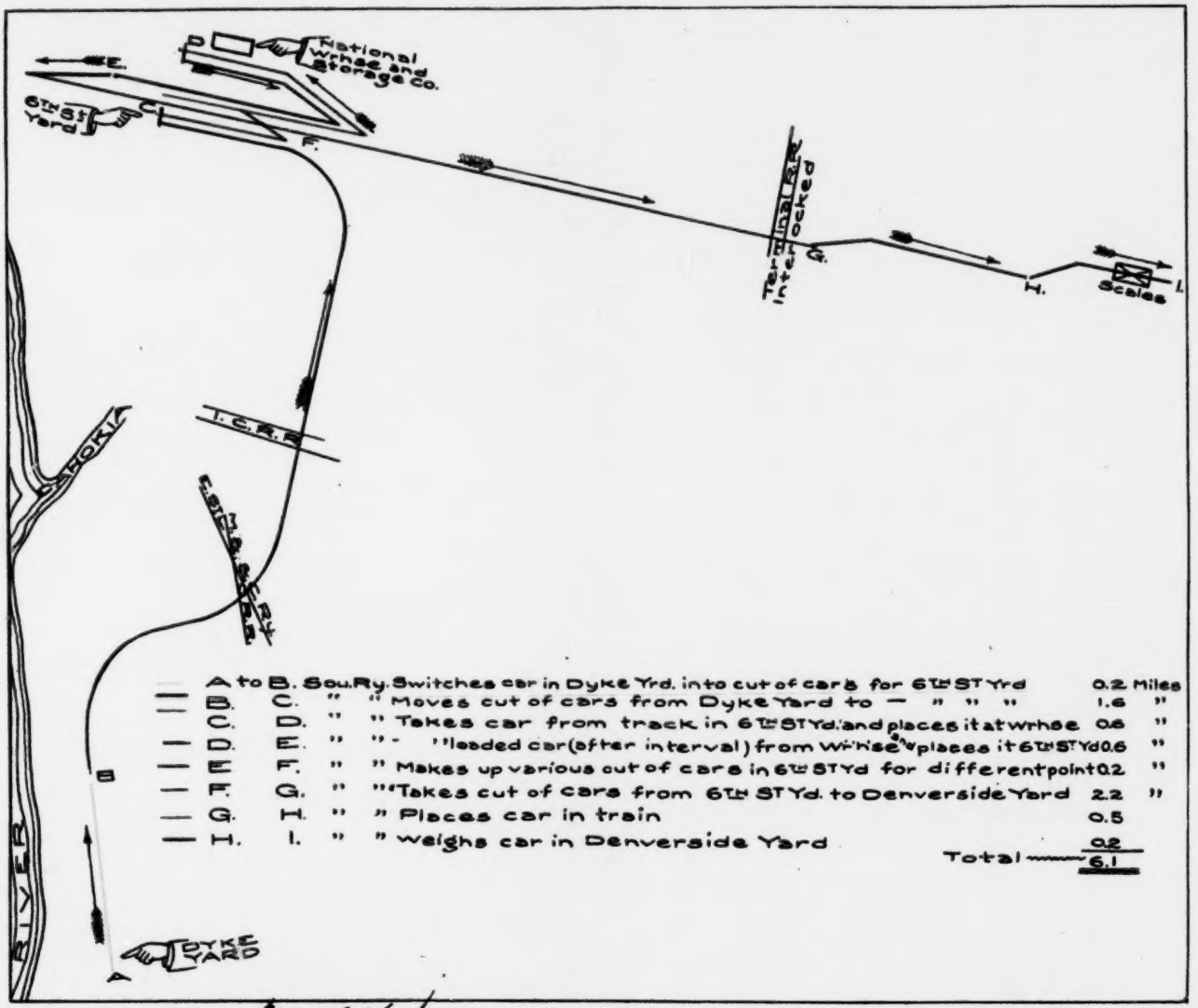
No. 104.
Southern Ry Co
v.
St. L. Ry. Co.
} p. 351

DEFT EX +30



No. 104
Southern Ry. Co
St L. N. Ry. Co
p. 353

DEFT EX #31



A	to B.	Sou. Ry.	Switches car in Dyke Yrd. into cut of cars for 6TH ST Yrd	0.2	Miles
B.	C.	"	" Moves cut of cars from Dyke Yard to — " " "	1.6	"
C.	D.	"	" Takes car from track in 6TH ST Yd. and places it at whse	0.6	"
D.	E.	"	" - "loaded car (after interval) from Wh'se & places it 6TH ST Yd	0.6	"
E.	F.	"	" Makes up various cut of cars in 6TH ST Yd for different point	0.2	"
F.	G.	"	"Takes cut of cars from 6TH ST Yd. to Denverside Yard	2.2	"
G.	H.	"	" Places car in train	0.5	
H.	I.	"	" weighs car in Denverside Yard	0.2	
			Total	6.1	

No. 104.
Southern Ry Co.
v.
A. K. & G. Co.
} p. 355.

357 # MAP OF THE SOUTHERN RAILWAY

EXCELLENT LOCATIONS

IN THE SOUTH ALONG THE

SOUTHERN RAILWAY

AND

MOBILE & OHIO RAILROAD

FOR MANUFACTURERS, LUMBERMEN, QUARRYMEN, MINERS AND FARMERS,

IN

ALABAMA, GEORGIA, KENTUCKY, MISSISSIPPI, NORTH AND SOUTH CAROLINA, TENNESSEE, VIRGINIA, INDIANA AND ILLINOIS. LARGEST COMMERCIAL AND MANUFACTURING CENTERS, MINING AND TIMBER DISTRICTS, AND THE MOST FERTILE AND HEALTHFUL SECTIONS.

ADVANTAGES:

LOW-PRICED LANDS, PLEASANT CLIMATE, ABUNDANCE OF COAL, IRON, TIMBER, AND OTHER RAW MATERIALS, CHEAP LABOR AND LIBERAL LABOR LAWS.

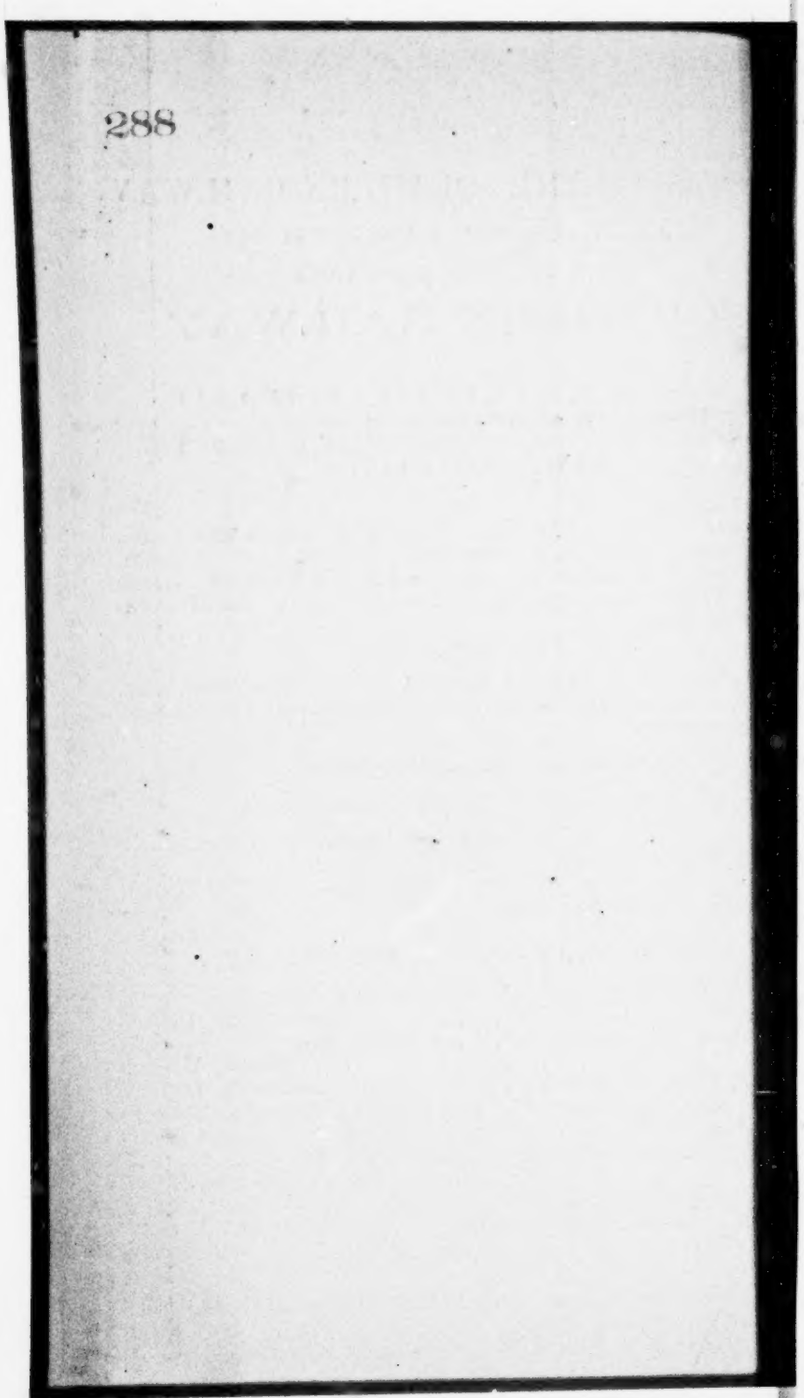
FOR INFORMATION ABOUT LOCATIONS, ADDRESS:

M. V. RICHARDS,
LAND AND INDUSTRIAL AGENT,
SOUTHERN RAILWAY
AND
MOBILE & OHIO RAILROAD.
WASHINGTON, D. C., U. S. A.

LAND AND INDUSTRIAL DEPARTMENT:

M. V. RICHARDS, LAND AND INDUSTRIAL AGENT, WASHINGTON, D. C.
W. A. MOYER, AGENT, 228 WASHINGTON STREET, BOSTON, MASS.
W. J. HURLBUT, AGENT.....CHATTANOOGA, TENN.
C. E. GAY, JR., AGENT, EQUITABLE BUILDING, ATLANTA, GA.
CHAS. S. CHASE, AGENT, CHEMICAL BUILDING, ST. LOUIS, MO.
T. B. THACKSTON, TRAVELING AGENT, 225 DEARBORN STREET, CHICAGO, ILL.
W. L. HENDERSON, AGENT.....MOBILE, ALA.
F. W. SMITH, TRAVELING AGENT.....BIRMINGHAM, ALA.

(Here follows map of Southern Railway marked p. 358.)



MAPS
TOO
LARGE
FOR
FILMING

359 DEF'T EX. # 33.

Defendant's Exhibit 33—Statement.

Rates Via All Rail.

Statement Showing Rates on Hay and Grain from St. Louis and East St. Louis Proper to Atlanta, Georgia, from Sept. 19th, 1879, to February 1st, 1905.

Sept. 19th 1879	49c	per 100 lbs.
Nov. 15th 1879	54c	"
Apr. 8th 1880	48c	"
Sept. 1st 1880	45c	"
Sept. 1st 1881	42c	"
Oct. 1st 1881	40c	"
Nov. 25th 1881	45c	"
Apr. 12th 1882	42c	"
July 10th 1882	35c	"
Sept. 1st 1882	40c	"
July 15th 1883	38c	"
Feb. 17th 1884	36c	"
Apr. 10th 1884	32c	"
July 15th 1887	34c	"
Jany. 23rd 1888	32c	"
Oct. 15th 1891	29c	"
Feb. 28th 1900	26c	"
Apr. 18th 1900	29c	"
Feb. 1st 1905	27c	"

NOTE—
From Oct. 12th 1900, to Feb. 5th 1901
Corn and Oats 26c per 100 lbs.
Other grain and hay 29c per 100 lbs.

The above rates to and including Apr-1st 1902 were taken from "Part 2 of Forty Years Review of Changes in Freight Tariffs Prepared by the Auditor of the Interstate Commerce ACommission Page—117."

Table LXXVII.

Rate effective Feb-1st 1905—Southern Railway Southeastern Junction Tariff # 22.

360 DEF'T EX #34.

Defendant's Exhibit 34—Table of Rates.

Rates via Mississippi River Steamers.

Statement Showing Rates on Sack Grain and Hay From St. Louis, Mo., to

		Memphis, Tenn.		Vicksburg, Miss.		New Orleans, La.	
		Sack Grain	Hay	Sack Grain	Hay	Sack Grain	Hay
1871	Highest	—	50	—	65	—	110
	Lowest	—	25	—	25	—	25
	Longest Period	—	25	—	40	—	25
1872	Highest	—	45	—	75	—	75
	Lowest	—	25	—	30	—	30
	Longest Period	—	40	—	40	—	35
1873	Highest	—	—	—	—	—	60
	Lowest	—	—	—	—	—	22½
	Longest Period	—	—	—	—	—	60
1874	Highest	—	—	—	—	—	40
	Lowest	—	—	—	—	—	17½
	Longest Period	—	—	—	—	—	20
1875	Highest	—	40	—	40	—	40
	Lowest	—	15	—	15	—	15
	Longest Period	—	20	—	25	—	25
1876	Highest	—	43	—	48	—	45
	Lowest	—	15	—	15	—	15
	Longest Period	—	22½	—	22½	—	22½
1877	Highest	25	30	35	35	35	35
	Lowest	12½	17½	20	25	15	20
	Longest Period	15	20	20	25	20	25
1878	Highest	50	30	50	35	35	30
	Lowest	7½	15	10	15	10	15
	Longest Period	7½	15	10	15	10	15
1879	Highest	20	25	35	40	30	35
	Lowest	10	15	15	20	10	15
	Longest Period	12½	17½	17½	22½	12½	17½
1880	Highest	51	25	30	35	25	30
	Lowest	12½	17½	20	25	15	20
	Longest Period	20	25	20	25	15	20
1881	Highest	22½	27½	30	35	25	32½
	Lowest	15	20	20	25	15	20
	Longest Period	15	20	30	35	22½	27½
1882	Highest	17½	22½	30	35	25	30
	Lowest	12½	17½	20	25	20	25
	Longest Period	12½	17½	20	25	20	25
1883	Highest	17½	22½	25	30	22½	27½
	Lowest	12½	17½	20	25	12½	17½
	Longest Period	12½	17½	25	30	20	25
1884	Highest	15	20	22½	27½	17½	22½
	Lowest	13	17½	20	25	12½	17½
	Longest Period	13	18	20	25	12½	17½
1885	Highest	15	17½	22½	27½	17½	22½
	Lowest	15	17½	22½	27½	15	20
	Longest Period	15	17½	22½	27½	17½	22½
1886	Highest	15	17½	20	25	17½	22½
	Lowest	10	13	17½	20	15	20
	Longest Period	12	13	17½	20	17½	22½
1887	Highest	20	25	20	25	20	22½
	Lowest	10	13	17½	20	15	20
	Longest Period	10	13	20	22½	17½	22½

361

		Memphis, Tenn. Sack Grain	Memphis, Tenn. Hay	Vicksburg, Miss. Sack Grain	Vicksburg, Miss. Hay	New Orleans, La. Sack Grain	New Orleans, La. Hay
1888	Highest	15	17	20	20	17½	20
	Lowest	10	13	17½	20	12½	17½
	Longest Period	10	13	17½	20	12½	20
1889	Highest	17½	22½	25	25	20	20
	Lowest	10	13	17½	20	17½	20
	Longest Period	11	13	17½	20	17½	20
1890	Highest	12½	15	17½	20	17½	20
	Lowest	10	12½	15	17½	15	17½
	Longest Period	10	12½	17½	20	15	17½
1891	Highest	20	22½	25	27½	20	22½
	Lowest	10	12½	17½	20	15	17½
	Longest Period	10	12½	17½	20	15	17½
1892	Highest	20	22½	25	34	20	22½
	Lowest	10	12	17½	20	15	17½
	Longest Period	10	12	17½	20	17½	20
1893	Highest	12	12	17½	20	17½	20
	Lowest	12	12	17½	20	15	20
	Longest Period	12	12	17½	20	17½	20
1894	Highest	15	17½	20	20	20	20
	Lowest	12	12	17½	20	12	17½
	Longest Period	12	12	17½	20	20½	20
1895	Highest	15	17½	20	20	20	20
	Lowest	10	12½	12½	15	10	12½
	Longest Period	10	12½	12½	15	10	12½
1896	Highest	12½	15	17½	20	15	17½
	Lowest	10	12	15	20	10	15
	Longest Period	10	12	15	20	15	17½
1897	Highest	8	12	15	20	15	17½
	Lowest	8	12	15	20	15	17½
	Longest Period	8	12	15	20	15	17½
1898	Highest	—	—	—	—	10	12½
	Lowest	—	—	—	—	10	12½
	Longest Period	—	—	—	—	10	12½
1899	Highest	—	—	—	—	10	15
	Lowest	—	—	—	—	10	15
	Longest Period	—	—	—	—	10	15
1900	Highest	—	—	—	—	10	15
	Lowest	—	—	—	—	10	15
	Longest Period	—	—	—	—	10	15
1901	Highest	10	—	15	—	10	15
	Lowest	10	—	15	—	10	15
	Longest Period	10	—	15	—	10	15
1902	Highest	10	12½	15	20	10	15
	Lowest	10	12½	15	20	10	15
	Longest Period	10	12½	15	20	10	15

The above Rates in cents per 100 lbs were taken from "Part 2 A Forty Year Review of Charges in Freight Tariffs, prepared by the Auditor of the Interstate Commerce Commission—pages 115 and 116"

"Table LXXV.—Highest and Lowest Freight Rates and the Rate continuing for the longest period during each year charged for the transportation of Flour, Pork, Grain, Meats, and Hay from St. Louis Mo., to Memphis, Tenn., Vicksburg, Miss., and New Orleans, La., via Mississippi River Steamers, from 1866."

* * * * * * *

Defendant's Exhibit 45—Joint Through Freight Tariff.

DEFT EX 45

JOINT THROUGH FREIGHT TARIFF W. T. L. No. 576

—OF THE—

Atchison, Topeka & Santa Fe Railway,
Santa Fe System. Tariff No. 6729.
(For routing and application, see Santa Fe System Tariff No. 6729.)

Chicago & Alton Railway Co.,
G. F. D. No. 10135, I. C. C. No. 1199, canceling G. F. D. 8315, I. C. C. 1109.

Chicago & Eastern Illinois Railroad,

Chicago & North-Western Railway,

Chicago, Burlington & Quincy Railroad,
G. F. C. No. 8858 of 1903.

Chicago Great Western Railway,

Chicago, Milwaukee & St. Paul Railway,
Receipt No. 5412, G. F. D. No. 40720, I. C. C. No. 6316.

Chicago, Peoria & St. Louis Railway,
I. F. C. No. 2413.

Chicago, Rock Island & Pacific Railway,
G. F. D. No. 11777.

Illinois Central Railroad,
Tariff No. B 2306, canceling A 2306.

Illinois Terminal Railroad,

Indiana, Illinois & Iowa Railroad,
G. F. C. No. 15278.

Iowa Central Railway,
G. F. C. No. 2636.

Muscatine North & South Railroad,
G. F. C. No. 304.

St. Louis, Keokuk & Northwestern R. R.

Wabash Railroad,
No. 30970, I. C. C. No. 1195.

In Connection with Railroads named on Page 2.

NAMING CLASS RATES

Subject to the Official Classification and Published Exceptions thereto

—ALSO PROVIDING—

TERRITORIAL GROUPING FOR RATES ON COMMODITIES

(See Page 1)

—FROM—

Stations in Illinois, Iowa and Missouri, on or East of the Mississippi River,

On Lines named above (as shown on Pages 17 to 35 inclusive), including rates from East Mississippi River Crossings on Traffic Originating Beyond.

—TO POINTS IN—

MIDDLE AND WESTERN STATES TERRITORY,

INDIANA, MICHIGAN, NEW YORK, OHIO, PENNSYLVANIA, WEST VIRGINIA AND KENTUCKY.

TAKING EFFECT JULY 15, 1903.

363 Rates from Points as shown on pages 17 to 36 to Stations East of the Illinois-Indiana State Line and Lake Michigan—Continued.

To Points in Group See Pages 36 to 104	From Points in Group	Rates in Cents per 100 lbs. Classes					
		1	2	3	4	5	6
Cincinnati.....Ohio	A	40	34	25	17	15	12
	B	40	34	25	17	15	12
	C	40	34	25	17	15	12
	D	40	34	25	18	15	12
	E	47	42	32	22	18	15
	EE	40	34	25	18	15	12
33	F	40	34	25	17	15	12
	G	42	35½	26	18	16	13
	H	54	45	35	25	21	17½
	I	54	45	35	25	21	17½
	J	40	34	25	17	15	12

* * * * *

Alphabetical List of Stations from which Rates shown on Pages 3 to 17 Apply—Continued.

Station	Road	Group
Bowen..... ..... "	Wab.....	H

* * * * *

364 DEF'T EX. #46 (Page 2).

Defendant's Exhibit 46—*Statement.*

Recap.

Union Warehouse

1903	Empties furnished by Sou. Ry. to Wiggins Ferry Company to load at Union.		Empties picked up by Wiggins Ferry Company for Union.
1903.			
May	18		0
June	21		10
July	41		10
August	24		12
September	12		2
October	11		9
November	2		6
December	1		3
1904.			
January	0		5
February	0		2
March	1		5
April	0		6
May	0		2
June	13		4
July	0		5
August	0		1
September	0		3
October	0		4
November	0		6
December	0		7
1905.			
January	0		0
February	0		0
Total	144	Total	102

Loads delivered by Wiggins Ferry to Southern Railway from Union 233.

* * * * *

365 DEF'T EX. # 47 (Page 2).

Defendant's Exhibit 47—*Statement.*

Cars Placed at National Warehouse

November, 1903, Until January 31st, 1905.

	Loads Placed	Mts Placed	For'd Over Sou.
Nov. 1903.....	46	2	1
Dec. "	81	1	21
Jan. 1904			
Feb. "	125	19	87
March "	41	38	41
April "	63	23	21
May "	68	54	32
June "	90	39	29
July "	39	30	14
August "	97	46	20
Sept. "	131	36	26
Oct. "	58	15	4
Nov. "	73	17	13
Dec. "	56	23	9
Jan. 1905.....	73	38	19
	1041	381	337

* * * * *

The above and foregoing is all the evidence introduced on the trial of the said cause, including all exhibits introduced by both the Petitioner and the Defendant.

For as much as the matters above set forth do not fully appear of record, the defendant tenders this, its bill of exceptions, in said cause, and prays that the same may be signed and sealed, which is done accordingly, this the 21st day of July A. D. 1906.

FRANCIS M. WRIGHT, *Judge.* [SEAL.]

Presented July 21, 1906.

F. M. W.

"O. K." Exhibits to be attached,

FORMAN & WHITNEL,
Att'ys for Petitioner.

Be it further remembered that afterwards on, to-wit: August 20th 1906, came the defendant herein by its said attorneys and filed in the office of the said Clerk its assignment of errors and petition for writ of error which said petition for vrit of errors and assignment of errors are in the words and figures following, to-wit:

366 *Petition for Writ of Error. Filed Aug.* 20, 1906.

UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

In the United States Circuit Court for the Eastern District of Illinois.

ST. LOUIS HAY & GRAIN COMPANY
vs.
SOUTHERN RAILWAY COMPANY.

Petition for Reparation.

Petition for Writ of Error.

And now comes the Southern Railway Company, defendant herein, and says that on or about the 25th day of June A. D. 1906, this Court entered a judgment herein, in favor of the plaintiff and against the defendant, in which judgment and the proceedings had therein in this case certain errors were committed to the prejudice of this defendant, and all of which will more in detail appear from the assignment of errors, which is filed with this Petition.

Wherefore this defendant petitions this Court for an order allowing this defendant to prosecute a writ of error to the United States Circuit Court of Appeals for the Seventh Circuit, from the said judgment of the Circuit Court of the United States for the Eastern District of Illinois, in the above entitled cause, for the correction of the errors so complained of, and that a transcript of record and of the proceedings and papers in this case, duly authenticated may be sent to the United States Circuit Court of Appeals for the Seventh Circuit, and also that an order be made fixing the amount of security which the defendant shall give and furnish upon said Writ of Error; that the bond so given be made to operate as a supersedeas bond, and that such other and further proceedings may be had as may be proper in the premises.

CLAUDIAN B. NORTHRUP,
EDWARD C. KRAMER,
Attorneys for Defendant.

(Endorsed:) Filed Aug. 20, 1906, Daniel Hogan, Clerk.

367 *Assignment of Errors. Filed Aug.* 20, 1906.

UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

In the Circuit Court of the United States for the Eastern District of Illinois, to the May Term, A. D. 1906.

ST. LOUIS HAY & GRAIN COMPANY, Petitioner,
vs.
SOUTHERN RAILWAY COMPANY, Defendant.

Suit to Collect Reparation Fixed by Order of the Interstate Commerce Commission.

Now comes the Southern Railway Company, defendant in the above entitled cause, by Claudian B. Northrop and Edward C. Kramer, its attorneys, and says that in the record, proceedings, findings and judgment in the above entitled cause, which judgment was entered on or about the 25th day of June, A. D. 1906, there are manifest errors which operate to the prejudice of the rights of the defendant in said cause in this:

First. The said Circuit Court erred in admitting in evidence the report and opinion of the Interstate Commerce Commission in the case of St. Louis Hay & Grain Company *vs.* Mobile & Ohio Railroad Company, Illinois Central Railroad Company, Louisville & Nashville Railroad Company and Southern Railway Company, decided May 15th, 1905, which said report and opinion of the said Commission is in words and figures as follows, to-wit:

1. Because the Commission in said opinion did not pass upon the issues presented to it in said cause.

2. Because the issues in said case presented the questions of the reasonableness and justness of the reconsigning rate complained of on hay from East St. Louis to Southeastern points which said issue was material and one of the principal issues in said cause, and was not passed upon and determined by said Interstate Commerce Commission.

3. Because said Report and Opinion of said Commission
368 does not find the facts involved in said matter before said Commission as required by Section 16 of the Act to Regulate Commerce.

4. Said Report and Opinion cannot be introduced as *prima facie* evidence of any matters involved before said Commission because the facts are not found by the Commission as required by the Act to Regulate Commerce.

5. Because said Report and Opinion fails to show what the issues in the case before the Interstate Commerce Commission were, and what facts the Commission found in regard to such issues and said Report and Opinion fails to make suitable reference to the evidence adduced before the Interstate Commerce Commission, in regard to any particular question where there was a conflict of evidence show-

ing how the Commission settled any disputed fact; and because said Report and Opinion fails to state as a fact whether or not there was any undisputed evidence in reference to any of the facts.

6. Because said Report and Opinion of the Commission is wholly irrelevant to the issues made by the pleadings before this Court in this case and makes no reference whatever to the main and material issue in this cause, to-wit, the reasonableness and justness of the reconsigning rate from East St. Louis to Southeastern points.

7. Because said Report and Opinion cannot be introduced as *prima facie* evidence of any matter involved in this suit.

Second. The said Circuit Court erred in admitting over the objection of the defendant, the following testimony of the witness T. C. Powell, on cross examination by the plaintiff:

Q. Have you any control whatever over this traffic at Louisville, so you can charge a man any more when he reconsigns it, when he unloads it, than you could if he simply had the cars transported in there and afterwards transported to Atlanta? Could you make any distinction? Do you make any distinction? Does the man who reconsigns at Louisville have to pay anything for it?

A. Yes sir, because I have stated the rate to Louisville proper is higher than 13 cents, in my opinion. If it is 16 cents, as it probably is, about 16, he pays about 33 cents on a reconsigned shipment. Then on shipments moving direct from Bowen through East St. Louis to Louisville and Atlanta, we have certain rules for reconsigning the car at Louisville, which are filed with the Commission, and which provided from certain Illinois Territory a recon-
369 signing rate of 22 cents at the time of this complaint; certain Indiana territory a rate of 24 cents, and from certain other territory a rate of 23 cents; and from certain Illinois territory there would be a rate of 23 cents. These are all covered by tariffs filed with the Interstate Commerce Commission. A reconsigned shipment at Louisville invariably pays, so far as we are concerned, the regular local rate into Louisville, whatever that may be.

Third. The said Circuit Court erred in admitting over the objection of the defendant the following testimony of the witness, T. C. Powell, on cross examination by the plaintiff.

Q. Then are you willing to state to this Court that the man who reconsigns at Louisville is charged for that privilege the same way as the man who reconsigns at East St. Louis?

A. He is charged for the privilege, but not exactly the same way.

Fourth. The said Circuit Court erred in admitting over the objection of the defendant the following testimony of the witness T. C. Powell, on cross examination by the plaintiff:

Q. Explain just what is done.

A. At East St. Louis we fix the reconsigning rate at 28 cents from East St. Louis to Atlanta. In order to get that rate he must produce an expense bill showing that he has paid freight into East St. Louis, and on that evidence he is given the benefit of a rate of one cent less than the East St. Louis proper rate. On the other hand, at Louisville, we have by publication established several different territories of origin; the rate varies according to the point of origin shown on

the expense bill. I mean the rate south of the Ohio River earned by the Southern from Louisville to the destination. If that shipment originates west of the Mississippi River we do not carry the charges paid to Louisville; we simply charge from Louisville to Atlanta 21 cents; if it originates in Illinois, we will say Bowen, we charge him 22 cents if it originates in certain territory in Indiana we charge him 23 cents if it originates in certain other territory in Indiana we charge 24 cents.

Fifth. The said Circuit Court erred in admitting over the objection of the defendant the following testimony of the witness E. K. Voorhees, on cross examination by the plaintiff:

Q. Did that privilege of unloading and loading (at Memphis) again make any difference in the through rate from one point to another?

A. It didn't in some territory; in some others it did.

370 Sixth. The said Circuit Court erred in admitting over the objection of the defendant the following testimony of the witness E. K. Voorhees on cross examination by the plaintiff:

Q. Do you grant a reconsigning privilege at Memphis?

A. No sir, not on hay.

Seventh. The said Circuit Court erred in admitting over the objection of the defendant, the following testimony of the witness Joseph M. Denyven on cross examination by the plaintiff:

Q. Do you permit reconsignments at Cairo?

A. On hay?

Q. Yes?

A. No, sir.

Eighth. The said Circuit Court erred in admitting over the objection of the defendant, the following testimony of the witness, Joseph M. Denyven, on cross examination by the plaintiff:

Q. You have answered in reference to a man taking a car down there (Cairo Illinois) and unloading the hay into another car and sending it along. Suppose he took the car down there and did not unload it, but sent it along, would not the through rate be exactly the same as though he unloaded it?

A. Well, the through rate on a car that was not unloaded would be whatever the sums of the rates might be.

Q. So he would not pay any more if he unloaded than if he did not unload it?

A. Well, he would not pay any more than the combination.

Ninth. The said Circuit Court erred in admitting over the objection of the defendant the following testimony of the witness Robert L. McKellar, on cross examination by the plaintiff:

Q. Could a man ship a car load of hay to Louisville from this section of Illinois, and then load the hay into other cars and send the second car to a point in the Southeast. Was that the practice?

A. Let me understand the question. You want to know what is the movement of a car at Louisville; go into a warehouse there and then reship the car from Louisville to the Southeast?

Q. Yes?

A. I think it may be correctly said that there has been

371 such a movement, although I will add that I think it is very lately.

Q. When they do unload it in that way is the through rate from the point of origin any more than it would be if they had not unloaded it?

A. Depend on where it came from. If it comes from a point that there is only one rate into Louisville, it will pay whatever the local rate may be from Louisville to final destination. If it comes from a point that there is only one rate into Louisville, say six cents or 9 cents per 100 pounds, if it gets into Louisville it would have to pay that 9 cents; and if it goes out by the Southern it will have to pay whatever the local rate may be from Louisville to final destination.

Tenth. The said Circuit Court erred in admitting over the objection of the defendant the following testimony of the witness J. R. Peachy, on cross examination by the plaintiff:

Q. Well, if it is true at the present time that East St. Louis dealers pay 2 cents, while Ohio River points and other points on your lines are allowed the privilege of reconsigning without extra charge, that would put the East St. Louis dealers at a disadvantage compared with the dealers at these other points, would it not?

A. Well, it might. Depends entirely upon the conditions presented at East St. Louis. The man who handles hay at East St. Louis warehouses has the benefit of other large markets, East St. Louis and St. Louis; he tests these markets and if he prefers to get a better price by shipping to the southeast, he ships to the southeast. but the man at Cairo has no market to test, and therefore very little hay comes into Cairo that is unloaded and reloaded. The rates break at Cairo. You cannot charge a man any more than the local rate to Cairo and the local rate out. The Cairo man has no large market, as the East St. Louis man has.

Eleventh. The said Circuit Court erred in admitting over the objection of the defendant the following testimony of the witness, James W. Dye, for the plaintiff:

Q. That is not the question, I asked you whether they do pay anything extra for the reconsigning privilege there (Referring to points on the Ohio River, Memphis and Nashville)

A. No Sir, they do not.

Twelfth. The said Circuit Court erred in admitting over the objection of the defendant, the following testimony of the witness, James W. Dye, for the plaintiff:

372 Q. Where is it they do not pay anything extra? (Meaning extra for reconsigning)

A. Nashville, Tennessee; Cairo, Illinois; Evansville, Indiana; Memphis, Tennessee; Cincinnati, Ohio and I believe Louisville, Kentucky, I am not sure.

Thirteenth. The said Circuit Court erred in admitting over the objection of the defendant, the following testimony of the witness, James W. Dye, for the plaintiff:

Q. Are there dealers at those points (Referring to the points mentioned in the answer last above quoted) that is, dealers in hay in the same way you do, there?

A. Identically, the same.

Q. Shipping to the same markets in the Southeast?

A. Yes Sir.

Q. In competition with you?
A. Very much competitors both buy and selling; they buy in my territory and sell in our Territory.

Fourteenth. The said Circuit Court erred in admitting over the objection of the defendant, the following testimony of the witness William J. Edwards, for the plaintiff:

Q. What is the fact about reconsignments down there, (meaning Nashville, Tennessee) Is there any reload of hay done?
A. Reconsigning is permitted.
Q. Is there any extra charges made over the charge for through shipments; any thing that comes in?
A. No Sir, there is not.

Fifteenth. The said Circuit Court erred in admitting over the objection of the defendant, the following testimony of the witness, W. B. Harrison, for the plaintiff.

Q. Is there any charge for reconsigning at these points (Referring to Ohio River Points and Louisville and Memphis).
A. No Sir; Not that I know of.
Q. How does it effect dealers in hay at East St. Louis?
A. It is a handicap for them in competing, especially with the Nashville Gateway of 2 cents per 100 pounds.
Q. Where do they compete.
A. In Southeast and Carolina territories.
Q. Do they also buy in the same markets north of East St. Louis?
A. Yes Sir.

Sixteenth. The said Circuit Court erred in admitting over the objection of the defendant, the following testimony of the witness, E. L. Bartlett, for the plaintiff.

373 Q. Do you know whether or not any extra charge is made for the reconsigning privilege at Ohio River points, at Nashville and Memphis?
A. Well, there is 2 cents per 100 pounds; 2 cents.
Q. At these points? At Ohio River points?
A. No; there is no extra charge there.
Q. How does it affect dealers at East St. Louis?
A. We are at a disadvantage. We are laboring here under a disadvantage of about 2 cents per 100 pounds.
Q. On that account?
A. On that account, Yes Sir. We are competing with them in Southeastern territory and the Carolinas.
Q. Also competing with them in buying in the territory north of East St. Louis?
A. Yes Sir. There is where we receive most of our hay.

Seventeenth. The said Circuit Court erred in overruling and denying the motion offered by the defendant at the close of all the evidence in the above entitled cause to strike out from the evidence and exclude from consideration of said case the Report and Opinion of the Interstate Commerce Commission introduced by Petitioner and marked "Exhibit B" in its testimony, which said Report and Opinion of the Interstate Commerce Commission is set forth in words and figures in Assignment of Error Number One herein, for the reason that said Interstate Commerce Commission, by said Report and

Opinion, did not find the facts involved in said matter before said Commission, as required by Section 16 of the Act to Regulate Commerce, and also to strike out from the evidence and exclude from consideration of this case all of the testimony introduced herein showing, or tending to show, that hay may be reconsigned at Cincinnati, Louisville, Evansville, Cairo, Memphis, Nashville, or at any or either of said places, without extra charge, and also to strike out all of the testimony introduced in evidence in reference to notations, or other data, contained in tariffs to which the Southern Railway Company is not a party, which said motion is in words and figures as follows, to-wit:

374 *Assignment of Errors. Filed Aug.* 20, 1906.

UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

In the Circuit Court of the United States for the Eastern District of Illinois, to the May Term, A. D. 1906.

ST. LOUIS HAY & GRAIN COMPANY, Petitioner,
vs.
SOUTHERN RAILWAY COMPANY, Defendant.

Suit to Collect Reparation Fixed by Order of the Interstate Commerce Commission.

And now at the close of all the evidence offered in the above entitled suit, comes the defendant, Southern Railway Company, by Claudian B. Northrop and Edward C. Kramer, its attorneys, and moves the Court to strike out from the evidence and exclude from consideration of this case, the Report and Opinion of the Interstate Commerce Commission, introduced by petitioner herein, and marked "Exhibit B" of its testimony, for the reason that said Interstate Commerce Commission by said Report and Opinion did not find the facts involved in said matter before said Commission as required by Section 16 of the Act to regulate Commerce.

Because said report and opinion cannot be introduced as *prima facie* evidence of any matters involved before said Commission because the facts are not found by the Commission as required by law.

Because said Report and Opinion fails to show what the issues in the case before the Interstate Commerce Commission were, and facts the Commission found in regard to such issues and said Report and Opinion fails to make suitable reference to the evidence adduced before the Interstate Commerce Commission, in regard to any particular question where there was a conflict of evidence showing how the Commission settled any disputed fact; because said Report and Opinion failed to state as a fact whether or not there was any undisputed evidence in reference to any of the facts.

375 Because said Report and Opinion of the Commission is wholly irrelevant to the issues made by the pleadings before this Court in this case and makes no reference whatever to the

main and material issue in this cause, to-wit, the reasonableness and justness of the reconsigning rate from East St. Louis to Southeastern points.

Because said Report and Opinion cannot be introduced as *prima facie* evidence of any matter involved in this suit.

And to strike out from the evidence and exclude from consideration of this case all of the testimony introduced herein showing or tending to show that hay may be reconsigned at Cincinnati, Louisville, Evansville, Cairo, Memphis, Nashville or at any or all of said places without extra charge, because the petition filed before the Interstate Commerce Commission did not allege any undue or unreasonable prejudice or disadvantage against East St. Louis or against any person there located, and did not allege any undue or unreasonable preference or advantage in favor of said Ohio and Mississippi River Crossings, or in favor of any persons therein located, with reference to reconsignment charges, and no such issues were involved before the Interstate Commerce Commission, and none are involved here.

And to strike out all the testimony introduced in evidence in reference to notations or other data contained in tariffs to which the Southern Railway Company is not a party. Because the Commission in its Report and Opinion found that no such issues was presented to it for trial.

CLAUDIAN B. NORTHROP,
EDWARD C. KRAMER,
Attorneys for Defendant.

Because said Report and Opinion of the Interstate Commerce Commission introduced in evidence by the petitioner herein and marked "Exhibit B" of its testimony, does not contain a finding of facts involved in said matter before said Commission as required by Section 16 of the Act to Regulate Commerce, and because said Report and Opinion is not proper and competent evidence to be introduced as *prima facie* evidence of matter involved before said Commission for the reason that the facts are not found and set forth in said Report and Opinion by said Commission as required by law; and because said Report and Opinion fails to show what the issues in the said cause before the Interstate Commerce Commission were and what facts the Commission found in regard to such
376 issues; said Report and Opinion failed to make suitable reference to the evidence adduced before the Interstate Commerce Commission in regard to any particular question where there was a conflict of evidence showing how the Commission settled such disputed fact; and because said Report and Opinion fails to state as a fact whether or not there was any disputed evidence in reference to any of the facts; and because said Report and Opinion of the Commission is wholly irrelevant to the issues made by the pleadings before this Court in this case and makes no reference whatever to the main and material issues in this case, to-wit, the reasonableness and justness of the reconsigning rate from East St. Louis to Southeastern points; and because said Report and Opinion cannot be introduced

as *prima facie* evidence of any of the matters involved in this case and for these reasons ought to be excluded from the evidence.

Because the evidence introduced herein showing or tending to show that hay may be reconsigned at Cincinnati, Louisville, Evansville, Cairo, Memphis, Nashville or any or either of said places without extra charge, is wholly irrelevant to the issues involved in this case in this Court, because the petition filed before the Interstate Commerce Commission did not allege any undue or unreasonable prejudice or disadvantage against East St. Louis or against any person there located, and did not allege any undue or unreasonable preference or advantage in favor of said Ohio and Mississippi River Crossings, or in favor of any person thereat located, with reference to reconsignment charges on shipments of hay.

Because the tariff sheets and rates of other railway companies introduced in evidence in this case to which defendant, Southern Railway Company, is not a party is irrelevant and incompetent testimony in this case.

Eighteenth. The said Circuit Court erred in overruling and denying the motion offered by the defendant at the close of all the evidence introduced on the trial of this cause to remand the cause tried before the Interstate Commerce Commission, upon which reparation was ordered and enforcement of which is sought in this case, back to the Interstate Commerce Commission, which said motion is in words and figures as follows, to-wit:

377 *Assignment of Errors. Filed Aug.* 20, 1906.

UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

In the Circuit Court of the United States for the Eastern District of Illinois, to the May Term, A. D. 1906.

ST. LOUIS HAY & GRAIN COMPANY, Petitioner,
vs.
SOUTHERN RAILWAY COMPANY, Defendant.

Suit to Collect Reparation Fixed by Order of the Interstate Commerce Commission.

And now at the close of all evidence in the case comes defendant, Southern Railway Company, by its attorneys, Claudian B. Northrop and Edward C. Kramer, and moves the Court to remand the case tried before the Interstate Commerce Commission upon which reparation was ordered and enforcement of which is sought in this case, back to the Interstate Commerce Commission for the following reasons:

1. Because the issues presented to the Interstate Commerce Commission were not passed upon and determined by said Interstate Commerce Commission.

2. Because peti-on filed before the Interstate Commerce Commission by St. Louis Hay & Grain Company in said case, in the fifth paragraph thereof, alleges that the reconsigning rate charged on shipments of hay from East St. Louis to Southeastern Points is unreasonable and that by reason thereof the petitioner has been compelled to pay unreasonable and unjust rates for the transportation of hay from East St. Louis to Southeastern points, in violation of Section 1 of the Act of Congress to Regulate Commerce. Which said allegation was denied by the defendant in paragraph 5 of its answer filed in said case before the Interstate Commerce Commission, and in addition to said direct denial of same paragraph 5 of defendant's answer, defendant, Southern Railway Company, alleged that the charge for reconsignment of hay from East St. Louis to Southeastern Points is in all cases invariably one cent less than the rate from East St. Louis proper to said Southeastern Points.

Said pleadings directly present the issue of the reasonableness and justness of the said reconsigning rate from East St. Louis
378 to said Southeastern Points, which said issue was a material issue and was not passed upon by said Interstate Commerce Commission.

3. Defendant is entitled, as a matter of law, to have the Interstate Commerce Commission in the first instance pass upon all issues presented, and where the Interstate Commerce Commission fails to pass upon material issues presented to it, it is the duty of the Court to refer the matter back to the Interstate Commerce Commission to be proceeded in according to law.

4. Because said Interstate Commerce Commission did not make a report in writing in said case including findings of fact upon which the conclusions of the Interstate Commerce Commission were based as required by law, but instead thereof filed a report made up of mere conclusions which report failed to show what the issues in the case were, and what facts the Interstate Commerce Commission found in regard to such issues, and because said report failed to make suitable references to the evidence adduced before the Interstate Commerce Commission in regard to the particular questions and issues presented; and because said report failed to show whether or not there was any conflict in proof before the Interstate Commerce Commission, and failed to make references to the testimony taken before it showing how the Interstate Commerce Commission had settled any disputed facts; and because said report failed to state whether or not the evidence in regard to some or any of the issues was undisputed, that is to say, said report of the Interstate Commerce Commission failed to conform to the requirements of the law.

CLAUDIAN B. NORTHROP,
EDWARD C. KRAMER,
Attorneys for Defendant.

Because the Interstate Commerce Commission did not pass upon and determine the issues presented to it in this matter; and because the petition filed before the Interstate Commerce Commission in this matter in the 5th paragraph thereof alleges that the reconsigning

rate charged on shipments of hay from East St. Louis to Southeastern points in unreasonable, and that by reason thereof petitioner has been compelled to pay unreasonable and unjust rates for the transportation of hay from East St. Louis to Southeastern points in
379 violation of Section 1 of the Act to Regulate Commerce, which allegation was denied by defendant, Southern Railway Company, in the 5th paragraph of the answer filed by it before the said Commission, and the pleadings in said matter before said Commission directly presented the issue of the reasonableness and justness of said reconsigning rate from East St. Louis to Southeastern points, which said issue was a material one and was not passed upon by said Commission.

Because the defendant is entitled as a matter of law to have the Interstate Commerce Commission in the first instance pass upon all issues presented, and where the Interstate Commerce Commission fails to pass upon material issues presented to it, it is the duty of the Circuit Court of the United States in a suit brought to enforce reparation made by the Commission to refer the matter back to the Commission to be proceeded in according to law.

Because said Commission did not make a report in writing in the case before it including findings of fact upon which the conclusions of the Commission were based as required by law, but instead thereof filed a report made up of mere conclusions which report failed to show what the issues in the case were and what facts the Interstate Commerce Commission found in regard to such issues; and because said report failed to make suitable reference to the evidence adduced before the Interstate Commerce Commission in regard to the particular questions and issues presented.

Because said report failed to show whether or not there was any conflict in the proof before it and failed to make reference to the testimony taken before it showing how it settled any disputed facts.

Because said report failed to state whether or not the evidence in regard to some or any of the issues was undisputed that is to say, said report of the said Commission failed to conform to the requirements of law, and for these reasons this matter should be referred back to the Commission for further action.

Nineteenth. The said Circuit Court erred in overruling and denying the motion offered by the defendant at the close of all the evidence introduced on the trial of said cause to find the issues herein in favor of the defendant, and to render judgment herein in favor of the defendant for its costs in this cause expended, which said motion is in words and figures as follows, to-wit:

380 *Assignment of Errors. Filed Aug.* 20, 1906.

UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

In the Circuit Court of the United States for the Eastern District of Illinois, to the May Term, A. D. 1906.

ST. LOUIS HAY & GRAIN COMPANY, Petitioner,
vs.
SOUTHERN RAILWAY COMPANY, Defendant.

Suit to Collect Reparation Fixed by Order of the Interstate Commerce Commission.

And now at the close of all the evidence in the above entitled suit comes the defendant, Southern Railway Company, by its attorneys, Claudian B. Northrop and Edward C. Kramer, and moves the Court to find the issues herein in favor of the defendant, and render judgment herein in favor of the defendant for its costs in this cause expended, and for reason for said motion the defendant state- that the evidence herein is wholly insufficient to sustain a finding and judgment in favor of the petitioner.

CLAUDIAN B. NORTHROP,
EDWARD C. KRAMER,
Attorneys for Defendant.

Because all of the evidence which is tendered herewith shows that it is wholly insufficient to support a finding in favor of the petitioner and a judgment in its favor enforcing the order made by the Interstate Commerce Commission; and because said evidence conclusively shows that the defendant is entitled to a judgment dismissing the petition and for its costs in this cause expended.

Twentieth. The said Circuit Court erred in refusing to hold as law the Fourth Proposition of Law submitted by the defendant at the close of all the evidence introduced on the trial of this cause, which said proposition of law is in words and figures as follows, to-wit:

The Report of the Interstate Commerce Commission and its conclusions entitled "Report and Opinion of the Commission in
381 St. Louis Hay & Grain Company *vs.* Mobile & Ohio Railroad Company, *et al.*," introduced in evidence in this case in this Court by petitioner and marked petitioner's "Exhibit B," does not contain findings of fact and findings of fact are not so prepared and arranged in said Report as required by law so that said report can be introduced as evidence in this case.

Because the said Report and Opinion of the Commission introduced as evidence therein as Petitioner's "Exhibit B" does not find the facts, and the facts are not so prepared and arranged in said report so that the same may be introduced as evidence.

Twenty-first. The said Circuit Court erred in refusing to hold as law the seventh proposition of law submitted by the defendant at

the close of all the evidence introduced on the trial of this cause, which said proposition of law is in words and figures as follows, to-wit:

That one of the material issues made before the Commission in this case was whether or not the reconsigning rate from East St. Louis to Southeastern points was a reasonable and just rate; that this issues was a material one in said case, and the Commission did not pass upon and determine the same.

Because the petition filed before the Interstate Commerce Commission and filed herein as Petitioner's "Exhibit B" alleged in paragraph 5 thereof, that the reconsigning rate from East St. Louis to Southeastern points was unreasonable and unjust, which allegation in said petition was denied by the answer of the Southern Railway Company before said Commission, which issue was a material one and the Report and Conclusions of the Commission filed herein as Petitioner's "Exhibit B" shows that the Commission did not pass upon said issue.

Twenty-second. The said Circuit Court erred in refusing to hold as law the ninth proposition of law submitted by the defendant at the close of all the evidence introduced on the trial of this cause, which said proposition of law is in words and figures as follows, to-wit:

The petition filed before the Interstate Commerce Commission introduced herein as petitioner's "Exhibit A" in this case, does not complain of any undue or unreasonable prejudice or disad-
382 vantage to the localities and markets of East St. Louis or St. Louis; nor of any undue or unreasonable preference or advantage to Cincinnati, Louisville, Evansville, Cairo, Memphis and Nashville, or either or any of them or other localities; and no issue of any undue or unreasonable prejudice or disadvantage against, or undue or unreasonable preference or advantage to in favor of any localities or markets was presented to the Commission in said case for determination. And there is no such issue in this case before this Court.

Because in the petition introduced in evidence herein and marked "Exhibit A" there is no allegation of any undue or unreasonable prejudice or disadvantage against the markets and localities of East St. Louis or St. Louis, nor is there any allegation of any undue or unreasonable preference or advantage in favor of the markets and localities of Cincinnati, Louisville, Evansville, Cairo, Memphis and Nashville, or either or any of them or other localities; nor is there any allegation in the pleadings before this Court in reference to such matters, and no such issue is made by the pleadings in this Court.

Twenty-third. The said Circuit Court erred in refusing to hold as law the nineteenth proposition of law submitted by the defendant at the close of all the evidence introduced on the trial of this cause, which said proposition of law is in words and figures as follows, to-wit:

St. Louis Hay & Grain Company in its petition filed before the Interstate Commerce Commission in this case alleges that the reconsigning rate on hay from East St. Louis to Southeastern points is

unreasonable and unjust. This allegation was denied by defendant, Southern Railway Company, in its answer filed before the Interstate Commerce Commission.

This issue of reasonableness is again made and raised by the pleadings in this Court.

On this issue the only question is the reasonableness of the entire charge to the party who is charged.

It is not competent for St. Louis Hay & Grain Company to dissect the accounts of Southern Railway Company, allow this item, disallow that and manipulate the accounts of the railroad in its own way.

The reasonableness of the total charge on reconsigned hay from East St. Louis to Southeastern Points is the sole question open on this issue; and such items as the alleged extra cost, charge, or
383 expense of 2 cents per hundred pounds for transfer or reconsigning hay at East St. Louis, or such items as the divisions of the total through rate by and between the several carriers forming the through joint line from East St. Louis to Southeastern points or such items as one cent bridge toll at Ohio River crossings, are in nowise material to the issue of the reasonableness of the total charge to, the shipper for the total service of the transportation of hay reconsigned from East St. Louis to Southeastern Points.

It is not competent for the shipper to dissect and separate the several services of switching, transferring, side tracking, coupling and uncoupling cars, breaking up cuts of cars, making up trains, ferrying or bridging rivers, etc., at various junctions and other points on the through route; these items or similar items cannot be segregated from the whole by the shipper and in nowise concern him, the only question open to him being the reasonableness of the total rate for the entire service rendered to him,

Because said proposition of law is involved in this suit. The evidence shows that the complainant the St. Louis Hay & Grain Company has segregated the division of the total through rate on reconsigned hay from East St. Louis to Southeastern points and attempted to confine the inquiry to the reasonableness of that portion of the through rate alone, testing same entirely by the reference to the cost of switching, transferring and delay of cars at East St. Louis and not taking into consideration the cost and expense of the service at other junction points or other places on the through line from East St. Louis to Southeastern Points, and not taking into consideration the cost and expense and value of the entire service for the entire haul.

Twenty-fourth. The said Circuit Court erred in refusing to hold as law the sixth proposition of law as submitted by the defendant as applicable in this case, which said sixth proposition of law as submitted is in words and figures as follows, to-wit:

Where a petition and complaint is filed before the Interstate Commerce Commission under and by virtue of the Act to Regulate Commerce, and issues are made upon such petition and complaint, it is the duty of the Commission to pass upon each and every material issue made, and if the Commission upon an investigation makes an

order for reparation and suit is brought in a Circuit Court of the United States to enforce such order, and it is there made to appear that said Commission did not pass upon each and every ma-
384 terial issue made before the Commission, it is the duty of Circuit Court of the United States to remand the case to the said Commission for further proceedings according to law,

And in modifying the said proposition of law as submitted, so as to read as follows, to-wit:

Where a petition and complaint is filed before the Interstate Commerce Commission under and by virtue of the Act to Regulate Commerce and issues are made upon such petition and complaint, it is the duty of the Commission to pass upon each and every material issue made, and if the Commission upon an investigation makes an order for reparation and suit is brought in a Circuit Court of the United States to enforce such order, and it is there made to appear that said Commission did not pass upon each and every material issue made before the Commission, it is the duty of the Circuit Court of the United States to refuse to enforce the order.

Because where a petition and complaint is filed before the Interstate Commerce Commission under and by virtue of an Act to regulate Commerce, and issues are made upon such petition and complaint, it is the duty of the Commission to pass upon each and every material issue made, and if the Commission upon investigation makes an order for reparation and suit is brought in a Circuit Court of the United States to enforce such order, and it is there made to appear that said Commission did not pass upon each and every material issue made before the Commission, it is the duty of the Circuit Court of the United States, to remand the cause to the said Commission for further proceedings according to law, and because the said proposition of law as submitted is material to the issues involved in this case, and because the defendant having presented to the Court on the trial of this cause a motion to remand same to the Interstate Commerce Commission for further proceedings according to law, it was entitled to have the Court pass upon a proposition of law as to whether or not under the conditions named in said proposition of law, it was the duty of the Court to remand the said case as therein stated.

Twenty-fifth. The said Circuit Court erred in refusing to hold as law the eighteenth proposition of law as submitted by the defendant as applicable in this case, which said eighteenth proposition of law, as submitted, is in words and figures as follows, to-wit:

In determining the reasonableness and justness or unrea-
385 sonableness and unjustness of a rate the shipper is only concerned in the total charge made and as to whether or not the charge as a whole is reasonable and just. He is not concerned in the various items making up the entire charge and cannot inquire into the reasonableness or unreasonableness of an item or items making up the entire charge.

And in modifying the said proposition, as submitted, so as to read as follows, to-wit:

In determining the reasonableness and justness or the unreason-

ableness and unjustness of a rate the shipper is only concerned in the total charge made and as to whether or not the charge as a whole is reasonable and just. He is not concerned in the various items making up the entire charge and cannot alone and independently inquire into the reasonableness or unreasonableness of an item or items making up the entire charge.

Because in determining the reasonableness and justness or unreasonableness and unjustness of a rate, the shipper is only concerned in the total charge made, and as to whether or not the charge as a whole is reasonable and just. He is not concerned in the various items making up the entire charge, and cannot inquire into the reasonableness or unreasonableness of an item or items making up the entire charge.

Because the said proposition as submitted is material to the issues involved in this case, and because the proposition of law as modified by the Court unduly broadens the scope of the inquiry that a shipper may make into the reasonableness or unreasonableness of an item or items making up the entire charge.

Twenty-sixth. The said Circuit Court erred in rejecting and refusing to find the first special finding of fact submitted by the defendant on the trial of this cause, which said first special finding of fact is in words and figures as follows, to-wit:

Petitioner, St. Louis Hay & Grain Company, has two warehouses at East St. Louis, Ill., one located immediately south of Eads Bridge between Front Street and the Mississippi River. This warehouse is on the tracks of the Wiggins Ferry Company, and is known as the Union Warehouse. The other warehouse is known as the National Warehouse and is located on the corner of 10th Street and the Southern Railway Company's tracks.

Because the said first special finding of fact is material to the issues involved in this case; because the said first special
386 finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said first special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this cause do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said first special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said first special finding of fact so submitted by the defendant, nor do they contain the said first special finding of fact, nor the substance thereof.

Twenty-seventh. The said Circuit Court erred in rejecting and refusing to find the second special finding of fact submitted by the defendant on the trial of this cause, which said second special finding of fact is in words and figures as follows, to-wit:

There are about 75 miles of switch tracks as East St. Louis of which the Southern Railway Company owns about 20 miles.

Southern Railway Company has tracks at East St. Louis which reach from a point above the Merchant's Bridge near what is known as the North Incline, running through East St. Louis to a point below East St. Louis which is known as the Dyke Yard, and at different points in East St. Louis are yards belonging to the Southern Railway Company, respectively known as Brooklyn Yards, Denverside Yards and Sixth Street Yards and the Dyke Yard, all necessary and used for the purpose of switching cars from and to trains going to the South and from and to various Industries located in East St. Louis, Illinois. The switching and transfer situation at East St. Louis is complicated.

Because the said second special finding of fact is material to the issues involved in this case; because the said second special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said second special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper pecision of the case; because the said second special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said second special finding of fact so submitted by the defendant, nor do they contain the said second special finding of fact nor the substance thereof.

Twenty-eighth. The said Circuit Court erred in rejecting and refusing to find the third special finding of fact submitted by the defendant on the trial of this cause, which said third special finding of fact is in words and figures as follows, to-wit:

Rates south of the Ohio River are the foundation rates for hay going from East St. Louis to southeastern territory.

Because the said third special finding of fact is material to the issues involved in this case; because the said third special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said third special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by Court do not contain all that is material or necessary to a proper decision of the case; because the said third special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said third special finding of

fact so submitted by the defendant, nor do they contain the said third special finding of fact, nor the substance thereof.

Twenty-ninth. The said Circuit Court erred in rejecting and refusing to find the fourth special finding of fact submitted by the defendant on the trial of this cause, which said fourth special finding of fact is in words and figures as follows, to-wit:

388 Grain and hay originating in the States of Ohio, Indiana, Illinois, Nebraska, Missouri, Kansas, Arkansas and Texas, is shipped into Southeastern Territory. This hay and grain crosses the Ohio River at the gateways of Cincinnati, Louisville, Evansville, Cairo, etc., and crosses the Mississippi *T*iver at the gateways of East St. Louis, Cairo, Memphis, New Orleans, etc.

Because the said fourth special finding of fact is material to the issues involved in this case; because the said fourth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said fourth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said fourth special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court recited in its final order and judgment in this case do not include all that is material in the said fourth special finding of fact so submitted by the defendant, nor do they contain the said fourth special finding of fact, nor the substance thereof.

Thirtieth. The said Circuit Court erred in rejecting and refusing to find the fifth special finding of fact submitted by the defendant on the trial of this cause, which said fifth special finding of fact is in words and figures as follows, to-wit:

Southeastern Territory comprises nearly all of Alabama, part of Tennessee, all of Georgia, all of Florida, except the extreme western part of Florida, and part of South Carolina, Atlanta is a principal point in the Southeastern Territory.

Because the said fifth special finding of fact is material to the issues involved in this cause; because the said fifth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said fifth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of

389 the case; because the said fifth special finding of fact is material and necessary to be found and is material and necessary to the proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in said fifth special finding of fact so submitted, by the defendant, nor do they contain the said fifth special finding of fact, nor the substance thereof.

Thirty-first. The said Circuit Court erred in rejecting and refusing to find the sixth special finding of fact submitted by the defendant on the trial of this cause, which said sixth special finding of fact is in words and figures as follows, to-wit:

East St. Louis is classed with St. Louis and together they constitute the largest primary hay market in the United States: Because the said sixth special finding of fact is material to the issues involved in this case; because the said sixth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said sixth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said sixth special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in said sixth special finding of fact so submitted by the defendant, nor do they contain the said sixth special finding of fact, nor the substance thereof.

Thirty-second. The said Circuit Court erred in rejecting and refusing to find the seventh special finding of fact submitted by the defendant on the trial of this cause, which said seventh special finding of fact is in words and figures as follows, to-wit:

The defendant, Southern Railway Company, in the introduction of its evidence in this case used Atlanta, Ga., as a representative point in Southeastern Territory with reference to local shipments of hay from East St. Louis to Southeastern Territory, and reconsigned shipments of hay from East St. Louis to Southeastern Territory
390 and through shipments of hay originating at points north and west of East St. Louis and passing through East St. Louis to Southeastern Territory, and used Bowen, Ill., as a representative point in through shipments of hay originating north and west of East St. Louis and passing through East St. Louis to Southeastern Territory.

Atlanta, Georgia, fairly represents points of consumption in Southeastern Territory, and Bowen, Illinois, fairly represents points of production north and west of East St. Louis, with reference to rates and shipments involved in this suit:

Because the said seventh special finding of fact is material to the issues involved in this case; because the said seventh special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said seventh special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said seventh special finding of fact is material

and necessary to be found, and is material and necessary to a proper decision of this case; and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said seventh special finding of fact so submitted by the defendant, nor do they contain the said seventh special finding of fact, nor the substance thereof.

Thirty-third. The said Circuit Court erred in rejecting and refusing to find the eighth special finding of fact submitted by the defendant on the trial of this cause, which said eighth special finding of fact is in words and figures as follows, to-wit:

The rate on hay from the Ohio River crossings to Atlanta from June 1st, 1903 to Feb. 1st, 1905, was 24 cents per hundred pounds. The defendant, Southern Railway Company, during said time had a local rate on hay from East St. Louis to Atlanta of 5 cents above the rates from the Ohio River crossings, viz: 29 cents per hundred pounds and a reconsigning rate of 4 cents above the rate from Ohio River crossings, viz: 28 cents per hundred pounds and during said
391 time accepted from other connecting railway lines a charge of 2 cents above the rates from Ohio River crossings for its haul from East St. Louis to Southeastern points which was 26 cents per hundred pounds to Atlanta, on through shipments which had originated at points north and west of East St. Louis:

Because the said eighth special finding of fact is material to the issues involved in this case; because the said eighth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said eighth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said eighth special finding of fact is material and necessary to be found, and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said eighth special finding of fact so submitted by the defendant, nor do they contain the said eighth special finding of fact, nor the substance thereof.

Thirty-fourth. The said Circuit Court erred in rejecting and refusing to find the ninth special finding of fact submitted by the defendant on the trial of this cause, which said ninth special finding of fact is in words and figures as follows, to-wit:

That in all shipments in which defendant, Southern Railway Company, accepted a charge of 2 cents above the rates from Ohio River Crossings for hauling hay from East St. Louis to points in Southeastern Territory they were shipments that had originated at points north and west of East St. Louis or beyond East St. Louis and were hauled into East St. Louis by a connecting carrier in which the connecting carrier presented to Southern Railway Company a way bill showing that the hay had originated at some point north or west or

beyond East St. Louis and had been hauled into East St. Louis by said connecting carrier and was destined to some point in Southeastern Territory and said Southern Railway Company accepted the car or cars so delivered to it from such connecting carrier and
392 hauled them to the point of destination, and accepted as its share of the entire charge a charge of 2 cents per hundred pounds above the rate from Ohio River crossings to points of destination, and in the entire transaction the Southern Railway Company dealt with and received its share of the through charges from the connecting carrier, and had no transaction of any kind or character with the shipper and if the original bill of lading was not from the point of origin to point of final destination, or in other words the point of destination was changed while the hay was in transit or after it had arrived at East St. Louis, this fact was not made known to Southern Railway Company:

Because the said ninth special finding of fact is material to the issues involved in this case; because the said ninth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said ninth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said ninth special finding of fact is material and necessary to be found, and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said ninth special finding of fact so submitted by the defendant, nor do they contain the said ninth special finding of fact nor the substance thereof.

Thirty-fifth. The said Circuit Court erred in rejecting and refusing to find the tenth special finding of fact submitted by the defendant on the trial of this cause, which said tenth special finding of fact is in words and figures as follows, to-wit:

In all cases in which Southern Railway Company charged the reconsigning rate of 4 cents above the rate from Ohio River crossings points in Southeastern territory, they were cases in which the shipper presented to Southern Railway Company an expense bill showing that he had paid transportation charges on a carload of hay from some point of origin north or west or beyond East St. Louis to East St. Louis. Upon this evidence, Southern Railway billed a car-
393 load of hay for the shipper from East St. Louis to a point in Southeastern territory at the reconsigning rate and in the entire transaction dealt only with the shipper and had no transaction of any kind or character with a connecting carrier and these reconsignment charges were paid by the shipper to Southern Railway Company.

And in all such shipments the shipper was not compelled to ship out the identical hay out that had been shipped in as shown by his expense bill, but he might ship any hay *had* had in his warehouse or other places in East St. Louis:

Because the said tenth special finding of fact is material to the issues involved in this case; because the said tenth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said tenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said tenth special finding of fact is material and necessary to be found, and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said tenth special finding of fact so submitted by the defendant, nor do they contain the said tenth special finding of fact, nor the substance thereof.

Thirty-sixth. The said Circuit Court erred in rejecting and refusing to find the eleventh special finding of fact submitted by the defendant on the trial of this cause, which said eleventh special finding of fact is in words and figures as follows, to-wit:

All of the tariffs introduced in evidence in this case which show that Southern Railway Company accepts a charge of 2 cents above the rates from the Ohio River crossings to Southeastern territory on hay originating at points north or west or beyond East St. Louis and shipped directly through East St. Louis to points in Southeastern Territory show such charge to be a division of the through rate:

Because the said eleventh special finding of fact is material
394 to the issues involved in this case; because the said eleventh special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said eleventh special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said eleventh special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said eleventh special finding of fact so submitted by the defendant, nor do they contain the said eleventh special finding of fact, nor the substance thereof.

Thirty-seventh. The said Circuit Court erred in rejecting and refusing to find the twelfth special finding of fact submitted by the defendant on the trial of this cause, which said twelfth special finding of fact is in words and figures as follows, to-wit:

The reconsigning rate on hay of 4 cents above the rate from Ohio River crossings was made by and is the result of competition.

Because the said twelfth special finding of fact is material to the issues involved in this case; because the said twelfth special finding of fact is supported by the undisputed evidence introduced on the

trial of this case; because the said twelfth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said twelfth special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said twelfth special
395 finding of fact so submitted by the defendant, nor do they contain the said twelfth special finding of fact, nor the substance thereof.

Thirty-eighth. The said Circuit Court erred in rejecting and refusing to find the thirteenth special finding of fact submitted by the defendant on the trial of this cause, which said thirteenth special finding of fact is in words and figures as follows, to-wit:

That the rate on grain and hay from Ohio River crossings to Southeastern territory was made by and was the result of competition among rail lines hauling grain and hay from such Ohio River Crossings to Southeastern Territory, and the reconsigning rate of 4 cents above the rate from the Ohio River crossings to Southeastern territory was made by and was the result of competition among railway companies hauling grain and hay from East St. Louis to Southeastern territory:

Because the said thirteenth special finding of fact is material to the issues involved in this case; because the said thirteenth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said thirteenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said thirteenth special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said thirteenth special finding of fact so submitted by the defendant, nor do they contain the said thirteenth special finding of fact, nor the substance thereof.

Thirty-ninth. The said Circuit Court erred in rejecting and refusing to find the fourteenth special finding of fact submitted by the defendant on the trial of this cause, which said fourteenth special finding of fact is in words and figures as follows, to-wit:

The following are the distances by the various lines from and to points involved in this controversy:

396 East St. Louis to Atlanta—via L. & N.—N. C. & St. L.:

To Evansville	162	miles,
" Nashville	157	miles,
" Chattanooga	151	"
" Atlanta	138	"
	608	"

Nashville to Atlanta—L. & N.—N. C. & St. L.:

L. & N.	157	miles,
Total	446	"
N. C. & St. L.	289	"

Louisville to Atlanta—Sou. Ry.—C. N. O. & TP—W & A.:

To Danville	94	miles,
" Chattanooga	222	"
Beyond	138	"
	454	

Cincinnati to Atlanta via I. C.—N. C. & St. L.:

I. C. To Martin	60	miles,
N. C. & St. L. beyond	430	"
	490	"

Via I. C.—Sou. Ry. and Emory Gap:

I. C. To Nashville	196	miles,
To Chattanooga	151	miles,
Beyond	138	"
	485	"

Memphis to Atlanta via K. C. M. & B. and Sou. Ry.:

To Birmingham	251	miles
Sou. Ry.	167	"
	418	"

East St. Louis to Cairo	151	miles
East St. Louis to Evansville	162	"
East St. Louis to Louisville	217	miles:

Because the said fourteenth special finding of fact is material to the issues involved in this case; because the said fourteenth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said fourteenth special find-
397 ing of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings

of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said fourteenth special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case; and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said fourteenth special finding of fact so submitted by -he defendant, nor do they contain the said fourteenth special finding of fact nor the substance thereof.

Fortieth. The said Circuit Court erred in rejecting and refusing to find the fifteenth special finding of fact submitted by the defendant on the trial of this cause, which said fifteenth special finding of fact is in words and figures as follows, to-wit:

St. Louis Hay & Grain Company frequently makes through shipments from point of original purchase to point of destination without reconsigning. The right of making through shipments from point of origin to a point of ultimate destination is open to St. Louis Hay & Grain Company without discrimination:

Because the said fifteenth special finding of fact is material to the issues involved in this case; because the said fifteenth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said fifteenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said fifteenth special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case; and because the special finding of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said fifteenth
398 special finding of fact so submitted by -he defendant, nor do they contain the said fifteenth special finding of fact nor the substance thereof.

Forty-first. The said Circuit Court erred in rejecting and refusing to find the sixteenth special finding of fact submitted by the defendant on the trial of this cause, which said sixteenth special finding of fact is in words and figures as follows, to-wit:

The reconsigning rate of 4 cents above the rate from Ohio River crossings to Southeastern Territory is shown to be just and reasonable for the following reasons:

The evidence in this case shows

1. That said reconsigning rate is the result of competition in the transportation of hay and grain by rail lines and the water lines.

2. That the rate on hay from East St. Louis to Atlanta since 1879 has been reduced from 54 cents per hundred pounds to 28 cents per hundred pounds.

3. That the reconsigning rate on hay from East St. Louis to Southeastern points is low when compared with the rate on hay in other localities where the circumstances and conditions are similar.

4. Because the rate on hay from East St. Louis to Southeastern Territory is affected by competition hay there meets in coarse foods and substitutes for hay.

5. That said rate is reasonable and just in the opinion of expert traffic men.

6. Because the rate on hay from East St. Louis to Southeastern points is affected by the competition that hay shipped to Southeastern points has to meet in hay and other like products shipped from other markets.

7. Hauling grain is more remunerative to carriers than hauling hay and the reconsignment rates on hay and grain are the same, while in some other Sections the rate on hay is from 25 to 50 per cent. higher than the rate on grain.

8. This rate has been made by the short lines. Southern Railway Company necessarily had to meet these rates or not participate in the traffic, and it is one of the long lines.

9. East St. Louis-St. Louis *rates* under said rates has grown to be the largest hay market in the United States.

Because the said Sixteenth special finding of fact is material to the issues involved in this case; because the said sixteenth special
399 finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said sixteenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material to a proper decision of the case; because the said sixteenth special finding of fact is material and necessary to a proper decision of this case; and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said sixteenth special finding of fact so submitted by the defendant, nor do they contain the said sixteenth special finding of fact, nor the substance thereof.

Forty-second. The said Circuit Court erred in rejecting and refusing to find the seventeenth special finding of fact submitted by the defendant on the trial of this cause, which said seventeenth special finding of fact is in words and figures as follows, to-wit:

A through shipment of hay from points north and west and beyond East St. Louis to Southeastern points received by Southern Railway Company from a connecting carrier at East St. Louis requires 2 necessary switching movements on the part of Southern Railway Company in receiving said car from the connecting carrier and placing same in the train for the Southeast.

A reconsigned shipment from National Warehouse located on the line of Southern Railway Company in East St. Louis requires 3 necessary switching movements on the part of Southern Railway Company in placing the empty car at the warehouse, taking out the loaded car and placing it on the train for the Southeast. That a reconsigned shipment from Union Warehouse requires ten necessary switching movements in placing the empty car at the warehouse and

receiving the loaded car and placing it in the train for the South-east, 5 of these movements are made by the Wiggins Ferry Company:

Because the said seventeenth special finding of fact is material to the issues involved in this case; because the said seventeenth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said seventeenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special finding of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said seventeenth special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said seventeenth special finding of fact so submitted by the defendant, nor do they contain the said seventeenth special finding of fact, nor the substance thereof.

Forty-third. The said Circuit Court erred in rejecting and refusing to find the eighteenth special finding of fact submitted by the defendant on the trial of this cause; which said eighteenth special finding of fact is in words and figures as follows, to-wit:

The cost of a switching movement in the case of a reconsignment shipment to Southern Railway Company in East St. Louis and the cost of a switching movement in connection with through shipments in East St. Louis is 30 cents per movement, and Southern Railway Company pays to Wiggins Ferry Company $1.50 for the five movements made by it in a reconsignment shipment from the Union Warehouse over the lines of the Southern Railway Company:

Because the said eighteenth special finding of fact is material to the issues involved in this case; because the said eighteenth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said eighteenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said eighteenth special finding of fact is material and necessary to be found, and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in said eighteenth special finding of fact so submitted by the defendant, nor do they contain the said eighteenth special finding of fact nor the substance thereof.

Forty-fourth. The said Circuit Court erred in rejecting and refusing to find the nineteenth special finding of fact submitted by the defendant, on the trial of this cause, which said eighteenth special finding of fact is in words and figures as follows, to-wit:

A car is in use in East St. Louis on an average of one day in through shipment and a car is in use in East St. Louis on an aver... of five days in each reconsigned shipment:

Because the said nineteenth special finding of fact is material to the issues involved in this case; because the said nineteenth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said nineteenth special fi... of fact is necessary to a proper decision of the case; because the s... cial findings of fact substituted by the Court in its final order a... judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted ... the Court do not contain all that is material or necessary to proper decision of the case; because the said nineteenth special finding of fact is material and necessary to be found, and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said nineteenth special finding of fact so submitted by the defendant nor do they contain the said nineteenth special finding of fact, nor the substance thereof.

Forty-fifth. The said Circuit Court erred in rejecting and refusing to find the twentieth special finding of fact submitted by the defendant on the trial of this cause, which said twentieth special finding of fact is in words and figures as follows, to-wit:

It costs Southern Railway Company 52 cents per day to actually maintain its freight cars.

Because the said twentieth special finding of fact is mate-
402 rial to the issues involved in this case; because the said twentieth special finding of fact is supported by the undisputed evidence introduced on the trial of this cause; because the said twentieth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special finding of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said twentieth special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said twentieth special finding of fact so submitted by the defendant, nor do they contain the said twentieth special finding of fact nor the substance thereof.

Forty-sixth. The said Circuit Court erred in rejecting and refusing to find the twenty-first special finding of fact submitted by the defendant on the trial of this cause, which said twenty-first special finding of fact is in words and figures as follows, to-wit:

75 cents per day is a fair and reasonable charge to make for a car while in use at East St. Louis in a reconsigned shipment:

Because the said twenty-first special finding of fact is material to the issues involved in this case; because the said twenty-first special

finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said twenty-first special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said twenty-first special finding of fact is material and necessary to be found, and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the
403 said twenty-first finding of fact so submitted by the defendant, nor do they contain the said twenty-first special finding of fact, nor the substance thereof.

Forty-seventh. The said Circuit Court erred in overruling and denying the motion of the defendant to set aside the judgment of the Court rendered herein and the general and special findings of fact herein, and the propositions of law found herein, and made and entered by the Court in this suit, and to grant a new trial herein, which said motion is in words and figures as follows, to-wit:

Assignment of Errors. Filed Aug. 20, 1906.

UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

In the Circuit Court of the United States for the Eastern District of Illinois, to the May Term, A. D. 1906.

ST. LOUIS HAY & GRAIN COMPANY, Petitioner,
vs.
SOUTHERN RAILWAY COMPANY, Defendant.

Suit to Collect Reparation Fixed by Order of the Interstate Commerce Commission.

And now on this 25th day of June, A. D. 1906, comes the defendant, Southern Railway Company, by Claudian B. Northrup and Edward C. Kramer, its attorneys, and moves the Court to set aside the judgment of the Court rendered herein, and the general and special findings of fact herein, and made and entered by the Court in this suit; and to grant a new trial herein, and for grounds of said motion shows unto the Court the following:

1. The Court erred in admitting improper, irrelevant, immaterial and incompetent evidence on the trial of said cause over the objections of defendant.

2. The Court erred in refusing to admit proper, relevant, material and competent evidence offered by defendant on the trial of said suit.

3. The Court erred in refusing the 4th, 7th, 9th and 19th
404 propositions of law submitted by the defendant, and each of them.

4. The Court erred in refusing the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th and 21st special findings of fact submitted by defendant and each of them.

5. The Court erred in holding as law the propositions of law submitted by the petitioner, and each of them.

6. The Court erred in finding the special findings of fact submitted by petitioner, and each of them.

7. The general and special findings of fact found by the Court are contrary to and not supported by the evidence in the case.

8. The judgment and propositions of law held by the Court are not supported by the law in the case.

9. Because the Court erred in refusing defendant's motion to find the issues in this suit in favor of the defendant and to render judgment in favor of the defendant.

10. Because the Court refused defendant's motion to remand the case back to the Interstate Commerce Commission.

11. And for other good and sufficient reasons.

CLAUDIAN B. NORTHRUP,
EDWARD C. KRAMER,
Attorneys for Defendant.

Forty-eight. The said Circuit Court erred in finding in its first special finding of fact that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in i-s Report and Opinion in substance the following fact:

Large quantities of hay produced in territory east, north and west of East St. Louis are consumed in Southeastern Territory and much of it is carried through the East St. Louis Gateway and passess over the defendant's lines of railway from East St. Louis to points south of the Ohio River. With the exception of the Illinois Central, defendant's lines terminate in East St. Louis, and generally also, lines of railway over which the hay is carried from said producing points to East St. Louis terminate at that point: And in further finding that the said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court and in ordering that the
405 same be set out in the records of this Court, because said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not, in its Report and Opinion, find said facts in substance; because there was no evidence introduced on the trial of this cause to support the same.

Forty-ninth. The said Circuit Court erred in finding in its second special finding of fact that, on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

For the transportation from East St. Louis to said Southeastern points defendant's apply a proportional rate which is 2c per hundred

pounds greater than the rate to said Southeastern points from the Ohio River, if the hay is not unloaded at a warehouse in East St. Louis, regardless of whether or not the hay is shipped locally to East St. Louis or through billed from the point of origin to the points of final destination, and regardless of provisions in their tariff's concerning through billing; but if the hay is unloaded at a warehouse in East St. Louis, defendant's exact for the transportation thereof from East St. Louis to said Southeastern points a rate of 4c per hundred pounds greater than the rate from the Ohio River to said Southeastern points:

And in further finding that the said finding of fact by the said Interstate Commerce Commission, as set forth above, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court, and in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues in this case; because the Interstate Commerce Commission did not in its Report and Opinion find said facts in substance; because there was no evidence introduced on the trial of this cause to support the same.

Fiftieth. The said Circuit Court erred in finding in its third special finding of fact that on the hearing of this cause before the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

Complainant operates two warehouses at East St. Louis, and most of the hay it handles it purchases on the track at East
406 St. Louis unloads, inspects, assorts and reloads at said warehouses, and sells at said Southeastern points, in competition with other hay dealers who do not unload the hay at East St. Louis. In such competition complainant is therefore prejudiced to the extent of 2c per hundred pounds by defendants method of applying rates of transportation as aforesaid. Defendants claim this 2c difference in rates is justified by difference in cost to them between the two kinds of transportation services they are called upon to perform: and in further finding that the said finding of fact by the said Interstate Commerce Commission as above set forth is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court, and in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues involved in this cause; because the Interstate Commerce Commission did not in its Report and Opinion find said facts in substance because there was no evidence introduced on the trial of this case to support the same.

Fifty-first. The said Circuit Court erred in finding in its fourth special finding of fact that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

At East St. Louis transfers of loaded cars from the northern to the Southern lines and transfers of empty cars from the southern to the northern lines are generally made by a connecting railroad Company, and the charge made by that company for such service is $4.00 per car when the hay is unloaded as aforesaid, but only $2.00 per car when the hay is not so unloaded, and in each instance this

charge is paid by the carrier which hauls the hay south from East St. Louis: and in further finding that the said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court and in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not in its Report and Opinion find said facts in substance;
407 because there was no evidence introduced on the trial of this cause to support the same.

Fifty-second. The said Circuit Court erred in finding in its fifth special finding of fact that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

When the hay is unloaded as aforesaid an empty car must be furnished for the shipment by the carrier which hauls the hay south from East St. Louis, and the service of so furnishing is fairly worth from 40 to 60 per car: and in further finding that the said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court, and in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues involved in this cause; because the Intersate Commerce Commission did not, in its Report and Opinion, find said facts in substance; because there was no evidence introduced on the trial of this cause to support the same.

Fifty-third. The said Circuit Court erred in finding in its sixth special finding of fact that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

The car is in use from 2 to 3 days longer *than* when the hay is unloaded as aforesaid than when it is not so unloaded, and a fair compensation for such use is 20 cents per day:

and in further finding that the said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court, and in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not in its Report and Opinion find said facts in substance; because there is no evidence introduced on the trial of this cause to support the same.

408 Fifty-fourth. The said Circuit Court erred in finding in its seventh special finding of fact that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

When hay is unloaded and reloaded at warehouse as aforesaid the

time consumed in doing the work averages from 6 to 8 hours, but the expense of such hauling and reloading is borne entirely by the shipper:

and in further finding that the said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court, and in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues involved in in this case; because the Interstate Commerce Commission did not, in its Report and Opinion, find said facts in substance; because there is no evidence introduced on the trial of this cause, to support the same.

Fifty-fifth. The said Circuit Court erred in finding in its eighth special finding of fact that, on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

Shipments of hay to which the rate of 2c per 100 pounds above the rate from the Ohio River is applied as aforesaid, and which are not unloaded at East St. Louis warehouses, are frequently transferred from one car to another in the Railroad yards at East St. Louis either because cars in which the hay is shipped to East St. Louis from the north are out of repair, or because the northern lines are not willing to allow their cars to go south from East St. Louis. The expense of such transfer is from $1.25 to $1.50 per car, and this expense is entirely borne by the carrier which hauls the hay south from East St. Louis:

and in further finding that the said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court, and in ordering that the same be set out in the records of this
409 Court, because the said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not, in its Report and Opinion, find said facts in substance; because there was no evidence introduced on the trial of this cause, to support the same.

Fifty-sixth. The said Circuit Court erred in finding in its ninth special finding of fact that, on the hearing in this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

The transfer charge of $4.00 per car above mentioned was formerly $3.00 per car, and the transfer charge of $2.00 per day above mentioned was formerly $1.50 per car:

and in further finding that said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court, and in ordering that the same be set out in the records of this Court, because said

finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not, in its Report and Opinion, find said facts in substance; because there was no evidence introduced on the trial of this cause, to support the same.

Fifty-seventh. The said Circuit Court erred in finding in its tenth special finding of fact that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

The weight of hay in cars shipped as aforesaid from East St. Louis to Southeastern points is from 1,000 to 2,000 pounds greater when the hay is reloaded at East St. Louis warehouses than when it is not so reloaded. This is an advantage in favor of the reconsigned hay:

and in further finding that the said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court an in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did
410 not, in its Report and Opinion find said facts in substance; because there was no evidence introduced on the trial of this cause, to support the same.

Fifty-eighth. The said Circuit Court erred in finding in its eleventh special finding of fact that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

Cars from the north, after being unloaded at warehouses as aforesaid, are frequently reloaded for the south, thus avoiding expense to the southern line of placing an empty car and subtracting perhaps a day from the additional time of the car service:

and in further finding that the said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court, and in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues involved in this cause; because the Interstate Commerce Commission did not in its Report and Opinion find said facts in substance; because there was no evidence introduced on the trial of this case, to support the same.

Fifty-ninth. The said Circuit Court erred in finding in its twelfth special finding of fact that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

That, taking everything into account, the average additional expense to southern lines in case of reconsigned hay will not exceed that of direct through shipments by more than from $2.00 to $2.50

per car, which is equivalent on the average loading of hay to about one cent per 100 pounds:

and in further finding that the said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court, and in odering that the same be set out in the record of this Court, because said finding of fact is not material to the issues involved in this case;

because the Interstate Commerce Commission did not, in its
411 Report and Opinion find said fact in substance; because there was no evidence on the trial of this cause, to support the same.

Sixtieth. The said Circuit Court erred in finding in its thirteenth special finding of fact that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

Much of the hay which actually passes through East St. Louis might reach its southern destination via other gateways. Hay grown in different sections also competes via these other gateways in the south with that which does or might pass through East St. Louis. These gateways are Cincinnati, Louisville, Evansville, Cairo, Memphis, Nashville, and perhaps others. The testimony showed that at all these points hay could be stopped off, unloaded and treated as the complainant handles its hay at East St. Louis, without the imposition of any charge in addition to the through rate. The testimony showed that these markets all competed with East St. Louis, but the force of that competition did not appear:

And in further finding that the said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court, and in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues involved in this cause; because the Interstate Commerce Commission did not in its Report and Opinion find said facts in substance; because there was no evidence introduced on the trial of this cause, to support the same.

Sixty-first. The said Circuit Court erred in finding in its fourteenth special finding of fact that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

The complainant actually paid to the Southern Railway Company, on reconsigned shipments of hay, at the rate of 2c. per 100 pounds, the difference between the reconsigning rate and the rate on hay not reconsigned, the sum of $3,144.17:

And in further finding that the said finding of fact by the
412 said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court, and in ordering that the same be set out in the records

of this Court, because said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not, in its Report and Opinion, find said facts in substance, and because there was no evidence introduced on the trial of this cause, to support the same.

Sixty-second. The said Circuit Court erred in rendering judgment in favor of the petitioner and against the defendant in the sum of One Thousand Six Hundred Fifty Nine Dollars and Forty-One Cents ($1659.41) and costs and attorneys' fee and in ordering that execution issue against the defendant for the amount of the said judgment and costs.

Sixty-third. That said Circuit Court erred in allowing the petitioner an attorney fee herein in the sum of Three Hundred Fifty Dollars ($350.00), to be collected as part of the costs in this case, because:

1st. The said order and decision of the Court in allowing said attorney fee and ordering that the same be collected as part of the costs in this case, is contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States, in this, that it denies to the defendant herein the equal protection of the law.

2nd. It abridges the privileges and immunities of the defendant being a citizen of the United States.

3rd. The provisions of the Act of Congress to regulate commerce which allows an attorney fee to the petitioner in a proceeding of this character is contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States, and is unconstitutional and void.

Sixty-fourth. The judgment and findings of the Circuit Court are contrary to the evidence in the case.

Sixty-fifth. The judgment and findings of the Circuit Court are contrary to the law in this case.

Sixty-sixth. The judgment and finding of the Circuit Court are contrary to the law and the evidence in the case.

Sixty-seventh. The said Circuit Court erred in entering judgment in this case in favor of the plaintiff and against the defendant.

Sixty-eighth. The said Circuit Court erred in entering
413 judgment on the general findings of fact in favor of the plaintiff and against the defendant.

Sixty-ninth. The said Circuit Court erred in entering judgment on the special findings of fact in favor of the plaintiff and against the defendant.

Seventieth. The said Circuit Court erred in not finding the issue for the defendant and in not entering a judgment in favor of the defendant and against the plaintiff for costs.

Wherefore, the defendant prays that the said judgment of the Circuit Court of the United States for the Eastern District of Illinois may be reversed.

EDW. C. KRAMER,
CLAUDIAN B. NORTHRUP,
Attorneys for Defendant.

Be it further remembered that afterwards on, to-wit: August 20th, 1906, the following further orders of court was made and entered of record in said cause, to-wit:

Order of Aug. 20, 1906.

No. 107.

ST. LOUIS HAY & GRAIN COMPANY
vs.
SOUTHERN RAILWAY COMPANY.

And now afterwards, to-wit: On the 20th day of August A. D. 1906, came again the defendant, the Southern Railway Company, by Edward C. Kramer and Claudian B. Northrup, its attorneys, and said defendant having filed herein and presented to the Court its Petition praying for the allowance of a Writ of Error and Assignment of Errors, intended to be urged by it, praying also that a transcript of the record, proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals, for the Seventh Judicial Circuit; that an order be made fixing the amount of security which defendant shall furnish upon said Writ of Error, and that said bond so furnished be made a supersedeas Bond, and that such other and further proceedings may be had as may be proper in the premises.

In consideration whereof it is ordered by the Court, that a Writ of Error be and hereby is allowed to have reviewed in the United States Circuit Court of Appeals for the Seventh Cir-
414 cuit, the judgment heretofore entered herein. And that said defendant give bond according to law, in the sum of Four Thousand ($4,000.00) Dollars.

Enter. F. M. W.

And on the same day, to-wit, Aug. 20th, 1906 a bond on writ of error was filed in said cause, to-wit:

Bond on Writ of Error. Filed Aug. 20. 1906.

Know All Men By These Presents, that we Southern Railway Company, as principal, and Edward C. Kramer, of the County of St. Clair, in the State of Illinois, as surety are held and firmly bound unto St. Louis Hay & Grain Company in the penal sum of four thousand (4,000) dollars, legal money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, and firmly by these presents.

Witness our hands and seals this 20th day of August A. D. 1906.

The condition of the above obligation is such that whereas said St. Louis Hay & Grain Company did, on the 25th day of June A. D. 1906, in the Circuit Court of the United States for the Eastern Dis-

trict of Illinois, recover a judgment against the above bounden Southern Railway Company for one thousand six hundred and fifty nine dollars and forty one cents ($1,659.41) and costs of suit, from which said judgment of the said Circuit Court of the United States for the Eastern District of Illinois, said Southern Railway Company has sued by writ of error to Circuit Court of Appeals for the Seventh Circuit.

Now therefore if the said Southern Railway Company shall duly prosecute its writ of error with the effect and moreover pay the amount of judgment, interest, damages and costs rendered herein and to be rendered against it in case the said judgment shall be affirmed, then the above obligation shall be void otherwise it remain in full force and virtue.

SOUTHERN RAILWAY COMPANY,
By EDWARD C. KRAMER,
Division Counsel for the State of Illinois.
EDWARD C. KRAMER. [SEAL.]

415 And on the same day the following order of court approving the bond on appeal was made and entered of record, to-wit:

Order of Aug. 20, 1906, *Approving Bond.*

And afterwards, to-wit: On the 20th day of August, A. D. 1906 came again the defendant, the Southern Railway Company, by Edward C. Kramer and Claudian B. Northrup, its attorneys, and presented to the Court, said Bond on Writ of Error in this case, and the Court having examined said Bond and being advised as to the surety of said Bond, the same is by the Court approved and it is hereby ordered that said Bond shall operate as a supersedeas in this case.

F. M. W.

Enter.

Writ of Error.

Writ of Error. Issued Aug. 20, 1906.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court before you, or some of you, between St. Louis Hay & Grain Company, Plaintiff, and Southern Railway Company, Defendant a manifest error hath happened, to the great damage of the said Southern Railway Company, Defendant as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal,

distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals For The Seventh Circuit, together with this writ, so that you have the same in the said United States Circuit Court of Appeals for the Seventh Circuit at Chicago, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals for the Seventh Circuit may cause further to be done therein to cor-
416 rect that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 20th day of August, in the year of our Lord one thousand nine hundred and six.

DANIEL HOGAN,
Clerk of the Circuit Court of the United States for the Eastern Dist. of Illinois.
By A. G. DAVIS, *Deputy.*

Allowed by
FRANCIS M. WRIGHT, *Judge.*

Return to Writ of Error.

EASTERN DISTRICT OF ILLINOIS, *ss:*

In obedience to the within writ, I herewith transmit to the United States Circuit Court of Appeals for the Seventh Circuit, a true and complete transcript of the record and proceedings in the foregoing entitled cause this 13 day of September A. D. 1906.

DANIEL HOGAN,
Clerk United States Circuit Court,
Eastern District of Illinois.

(Endorsed:) United States Circuit Court of Appeals, Seventh Circuit. Southern R'y Co. plaintiff in Error *vs.* St. Louis Hay & Grain Co. Defendant in Error. Writ of Error. Copy deposited for the defendant in error in the Clerk's Office, U. S. Circuit Court, Eastern District of Illinois. Daniel Hogan Clerk.

417 UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

In the United States Circuit Court for the Eastern District of Illinois.

ST. LOUIS HAY AND GRAIN COMPANY
vs.
SOUTHERN RAILWAY COMPANY.

Petition for Reparation.

Præcipe for Transcript of Record.

The Clerk of said Court will please make a transcript of the record in the above entitled cause and transmit same to the Clerk

of the United States Circuit Court of Appeals, for the Seventh Circuit, in the following manner:

1st. All the pleadings of each of the parties filed herein, with the Exhibits thereto attached.

2nd. All orders and judgment of the Court made in this case in chronological order.

3rd. Bill of exceptions and all endorsements thereon.

4th. Petition for writ of error and assignment of errors, and all endorsements thereon.

5th. Order of Court allowing writ of error, and fixing the amount of the bond.

6th. Bond on writ of error and all endorsements thereon.

7th. Order of Court approving bond and making same supersedeas.

8th. Writ of error and all endorsements thereon.

9th. Præcipe for transcript of record and all endorsements thereon.

10th. Certificate of Clerk to transcript of record.

To Hon. Daniel Hogan, Clerk of said Court.

CLAUDIAN B. NORTHRUP &
EDW. C. KRAMER,
Attorneys for Defendant.

418 *Certificate of Clerk.*

UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

I, Daniel Hogan, Clerk of the Circuit Court of the United States for the Eastern District of Illinois, do hereby certify that the above and foregoing is a true, full and complete copy of the original record of this court, and the files, now remaining of record and on file in my office in the case therein lately pending wherein St. Louis Hay & Grain Company was plaintiff, and the Southern Railway Company was defendant. I further certify that the Writ of Error and Citation in Error with admission of service thereon hereto annexed, are the original Writ of Error and Citation in Error, with admission of service, granted in said cause.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, at my office, in the City of Danville, in said District, this 13th day of September, in the year of our Lord one thousand Nine Hundred and Six, and of the Independence of the United States, the one hundred and thirty-first year.

[SEAL.] DANIEL HOGAN, *Clerk.*

419 *Citation. Filed Sept.* 6, 1906.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to St. Louis Hay & Grain Company, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago, within thirty days from the date hereof, pursuant to a Writ of Error filed in the Clerk's Office of the Circuit Court of the United States for the Eastern District of Illinois, wherein Southern Railway Company is plaintiff in error and you are Defendant in error, to show cause, if any there be, why the judgment rendered against the said Plaintiff in error as in the said Writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Francis M. Wright, Judge Presiding of the Circuit Court of the United States, this 20th day of August, in the year of our Lord one thousand nine hundred and six.

FRANCIS M. WRIGHT, *Judge.*

Receipt of a true copy of the within Citation is hereby acknowledged and service of the within Citation is hereby accepted.

Dated this 4th day of September, A. D. 1906.

FORMAN & WHITNEL.
Attorney- for the St. Louis Hay & Grain Company, Plaintiff in said Case.

(Endorsed:) Gen. No. 107. Circuit Court of the United States, Eastern District of Illinois. St. Louis Hay and Grain Co. *vs.* Southern Ry. Co. Citation. Returnable Sept. 20 1906 Daniel Hogan Clerk. Filed Sep. 6 1906 Daniel Hogan, Clerk.

420 *Stipulation. Filed Sept.* 19, 1906.

UNITED STATES OF AMERICA,
Seventh Judicial Circuit, ss:

In the United States Circuit Court of Appeals for the Seventh Circuit, to the October Term, A. D. 1906.

SOUTHERN RAILWAY COMPANY, Plaintiff in Error,
vs.
ST. LOUIS HAY & GRAIN COMPANY, Defendant in Error.

Error to the Circuit Court of the United States for the Eastern District of Illinois.

It is hereby stipulated, by and between the parties to the above entitled cause, that the Record in said cause be printed as follows:

1st. All that part of the record from Page 1, to and including page 379 is to be printed.

2nd. Plaintiff's Exhibit #1, being pages 380 to 410 inclusive, is not to be printed.

3rd. Only those portions of plaintiff's Exhibit #2, consisting of pages 411 to 415 inclusive that are enclosed in blue pencil brackets are to be printed.

4th. All of plaintiff's Exhibit #3, consisting of pages 416 to 421, inclusive, is to be printed.

5th. Page 422 of Record is to be printed.

6th. Only those portions of defendant's Exhibit #1 that are enclosed in blue pencil brackets are to be printed.

7th. Only those portions of defendant's Exhibit #2 that are enclosed in blue pencil brackets are to be printed.

8th. Only those portions of defendant's Exhibit #3 that are enclosed in blue pencil brackets, being all of pages 436 and 437 of Record, are to be printed.

9th. All of defendant's Exhibits Nos. 4, 5, 6 and 7, being pages 439 to 454 inclusive, are to be printed.

10th. Only those portions of defendant's Exhibit #8 that are enclosed in blue pencil brackets are to be printed.

11th. All of defendant's Exhibits Nos. 9, 10, 11, 12, 13,
421 14, 15, 16, and 17, being pages 461 to 478 of Record inclusive, are to be printed.

12th. Only page 1 of defendant's Exhibit #18 is to be printed, same being page 479 of Record.

13th. All of defendant's Exhibits Nos. 19 and 20, being pages 481 and 482 of Record, are to be printed.

14th. Only page 1 of defendant's Exhibit #21, same being page 483 of the Record, is to be printed.

15th. All of defendant's Exhibits Nos. 22, 22*a*, 23, 24, 25, 26, 27, 28, 29, 30 and 31, being pages 484 to 497 of Record inclusive, are to be printed.

16th. Defendant's Exhibit #32, being page 498 of Record, is to be printed.

17th. All of defendant's Exhibits Nos. 33 and 34, being pages 499 to 502 of Record inclusive, are to be printed.

18th. All of defendant's Exhibits Nos. 35, 36, 37, 38, 39, 40, 41, 42 and 44, being pages 502*a* to 522 of Record, inclusive, are not to be printed.

19th. Only those portions of defendant's Exhibit #45 enclosed in blue pencil brackets are to be printed.

20th. Only page 2 of defendant's Exhibit #46, the same being page 664 of the Record, is to be printed.

21st. Only page 2 of defendant's Exhibit #47, the same being page 690 of Record, is to be printed.

22nd. All of the remainder of the Record, from page 760 to page 828 inclusive, is to be printed.

Dated this the 17th day of September, A. D. 1906.

EDW. C. KRAMER,
Attorney for Plaintiff in Error.
FORMAN & WHITNEL,
Attorneys for Defendant in Error.

(Endorsed:) Filed Sep. 19 1906 Edward M. Holloway, Clerk.

422 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 421, inclusive, contain a true copy of the printed record filed in this court on November 23, 1906, which was prepared for the printer, indexed, supervised and distributed by me in accordance with the rules of this court, and upon which the cause was heard and determined by the United States Circuit Court of Appeals for the Seventh Circuit, in the case of Southern Railway Company, *vs.* St. Louis Hay and Grain Company, No. 1329, October Term, 1907, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this twenty-fourth day of May A. D. 1907.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

423 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the United States Circuit Court of Appeals for the Seventh Circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court of Appeals before you, or some of you, between Southern Railway Company Plaintiff in Error and St. Louis Hay and Grain Company Defendant in Error, a manifest error hath happened, to the great damage of the said Southern Railway Company as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington on June Second 1907 within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the

United States, the sixth day of May, in the year of our Lord one thousand nine hundred and seven.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
WILLIAM R. DAY,
Associate Justice of the Supreme Court of the United States.

424 UNITED STATES OF AMERICA,
Seventh Judicial Circuit, ss:

In obedience to the within writ I herewith transmit to the Supreme Court of the United States a true and complete transcript of the record and proceedings in the foregoing entitled cause this twenty-fourth day of May, in the year of our Lord one thousand nine hundred and seven.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

[Endorsed:] No. 1329. Southern Railway Co. *vs.* St. Louis Hay & Grain Co. Writ of Error. Filed May 14, 1907. Edward M. Holloway, Clerk. Copy deposited for the defendant in error in the office of the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

425 At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held at the United States Court Rooms in the City of Chicago in said Seventh Circuit on the third day of October, 1905, of the October term in the year of our Lord one thousand nine hundred and five and of our Independence the one hundred and thirtieth.

And afterwards, to-wit: on the twenty-first day of September, 1906, in the October term last aforesaid, came the plaintiff-in-Error by its counsel Mr. Edward C. Kramer, and filed in the office of the clerk of this court his appearance, which appearance is in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1905.

No. 1329.

SOUTHERN RAILWAY COMPANY, Plaintiff-in-Error,
vs.
ST. LOUIS HAY AND GRAIN COMPANY.

The Clerk will enter my appearance as Counsel for the Plaintiff-in-Error.

EDWARD C. KRAMER.

Endorsed: Filed Sep. 21, 1906. Edward M. Holloway, Clerk.

And afterwards, to-wit: on the twenty-eighth day of September, 1906, in the October term last aforesaid, came the defendant-in-error, by its counsel Mr. W. S. Forman, Mr. L. O. Whitnel and Mr. P. J. Farrell, and filed in the office of the clerk of this court their
426 appearance, which appearance is in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1905.

No. 1329.

SOUTHERN RAILWAY COMPANY, Plaintiff-in-Error,
vs.
ST. LOUIS HAY AND GRAIN COMPANY.

The Clerk will enter my appearance as Counsel for the Defendant-in-Error.

W. S. FORMAN.
L. O. WHITNEL.
P. J. FARRELL.

Endorsed: Filed Sep. 28, 1906. Edward M. Holloway, Clerk.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held at the United States Court Rooms in the City of Chicago in said Seventh Circuit on the second day of October, 1906, of the October term in the year of our Lord one thousand nine hundred and six and of our Independence the one hundred and thirty-first.

And afterwards, to-wit: on the fifth day of December, 1907, in the October term last aforesaid, there was filed in the office of the clerk of this court a stipulation of counsel, which stipulation is in the words and figures following, to-wit:

427 In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1905.

No. 1329.

SOUTHERN RAILWAY COMPANY, Plaintiff in Error,
vs.
ST. LOUIS HAY & GRAIN COMPANY, Defendant in Error.

It is stipulated by and between the parties to the above entitled suit that the Plaintiff in Error be allowed until January First A. D. 1907 to file its brief of argument in said suit.

Dated this 28th day of November, A. D. 1906.

EDWARD C. KRAMER,
Attorney for Plaintiff in Error.
FORMAN & WHITNEL,
Attorney- for Defendant in Error.

Endorsed: Filed Dec. 5, 1905. Edward M. Holloway, Clerk.

And afterwards, to-wit: on the second day of January, 1907, in the October term last aforesaid, there was filed in the office of the clerk of this court a stipulation of counsel, which stipulation is in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1906.

No. 1329.

428 SOUTHERN RAILWAY COMPANY, Plaintiff-in-Error.
vs.
ST. LOUIS HAY & GRAIN COMPANY, Defendant in Error.

It is hereby stipulated and agreed by and between the Plaintiff in Error and the Defendant in Error in the above entitled cause by their respective counsel, that the time in which counsel for Defendant in Error shall file the brief of Defendant in Error may be extended to February 1, 1907, by agreement of parties.

Dated this December 31, 1907.

EDWARD C. KRAMER,
Counsel for Plaintiff in Error.
W. S. FORMAN,
L. O. WHITNEL,
Counsel for Defendant in Error.

Endorsed: Filed Jan. 2, 1907. Edward M. Holloway, Clerk.

And afterwards, on the same day, to-wit: on the second day of January, 1907, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

WEDNESDAY, *January* 2, 1907.

Court met pursuant to adjournment and was opened by proclamation of Crier.

Present: Hon. Peter S. Grosscup, Circuit Judge presiding.
Hon. Francis E. Baker, Circuit Judge.
Hon. Christian C. Kohlsaat, Circuit Judge.
Edward M. Holloway, Clerk.
Luman T. Hoy, Marshal.

429 1329.

SOUTHERN RAILWAY COMPANY
vs.
ST. LOUIS HAY AND GRAIN COMPANY.

Error to the Circuit Court of the United States for the Eastern District of Illinois.

It is ordered by t-e court that this cause be, and the same is hereby set down for hearing January 29, 1907.

And afterwards, to-wit: on the twenty-ninth day of January, 1907, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

TUESDAY, *January* 29, 1907.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present: Hon. Peter S. Grosscup, Circuit Judge presiding.
Hon. Francis E. Baker, Circuit Judge.
Hon. William H. Seaman, Circuit Judge.
Hon. Christian C. Kohlsaat, Circuit Judge.
Edward M. Holloway, Clerk.
Luman T. Hoy, Marshal.

Before Hon. Francis E. Baker, Circuit Judge.
Hon. William H. Seaman, Circuit Judge.
Hon. Christian C. Kohlsaat, Circuit Judge.

1329.

SOUTHERN RAILWAY COMPANY
vs.
ST. LOUIS HAY & GRAIN COMPANY.

Error to the Circuit Court of the United States for the Eastern District of Illinois.

430 Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and

briefs of counsel and on oral argument by Mr. C. B. Northrop and Mr. Edward C. Kramer, counsel for Plaintiff-in-Error, and by Mr. P. J. Farrell and Mr. L. O. Whitnell, counsel for Defendant-in-Error, and the court having heard the same takes this matter under advisement.

And afterwards, to-wit: on the sixteenth day of April, 1907, in the October term last aforesaid, there was filed in the office of the clerk of this court the opinion of the court in the words and figures following, to-wit:

431 In the United States Circuit Court of Appeals for the Seventh Circuit.

No. 1329. October Term, A. D. 1906, January Session, A. D. 1907.

SOUTHERN RAILWAY COMPANY, Plaintiff in Error,
vs.
ST. LOUIS HAY & GRAIN COMPANY.

Error to the Circuit Court of the United States for the Eastern District of Illinois.

Before Baker, Seaman, and Kohlsaat, Circuit Judges.

Defendant in error began this action at law under Section 16 of the Act to Regulate Commerce by filing a petition to recover judgment against plaintiff in error for the amount of a reparation awarded by the Interstate Commerce Commission. A jury having been duly waived, the court heard the evidence, made a special finding of facts, and entered judgment for the amount of the award, together with interest, attorneys' fees and costs.

The reparation was awarded by the Commission on a hearing of the complaint of defendant in error against plaintiff in error and three other railroads that run to Southeastern territory. That complaint, omitting the parts descriptive of the parties, was as follows:

"III. That defendants have adopted and maintain in force upon their respective lines of railway schedules of rates and charges wherein and whereby it is provided that the charges exacted for transporting hay in carloads over said lines, respectively, from East St. Louis to said southeastern points, shall be 2 cents per 100 pounds in addition to the regular established rates for transporting hay in carloads from Cairo, Illinois, to said southeastern points, when the shipments originate at points on railroads other than those of defendants and are not reconsigned at East St. Louis; and 4 cents per 100 pounds in addition to such established rates when the shipments are reconsigned at East St. Louis. That is to say, 2 cents per 100 pounds is exacted in each instance by defendants, respectively, for the privilege of reconsignment at East St. Louis.

432

"IV. That complainant made shipments of hay in carloads over

defendant's lines of railway, as described in Schedule A, hereto attached and made a part hereof, on or about the dates mentioned in said schedule, from East St. Louis to said southeastern points; that said shipments were reconsigned at East St. Louis, and that defendants exacted for the transportation thereof, as described in said schedlue, 4 cents per 100 pounds in addition to such established rates between Cairo and said southeastern points, while they contemporaneously severally transported in carloads hay that was not reconsigned at East St. Louis, for other shippers and between exactly the same originating and destination points, for 2 cents per 100 pounds in addition to said established rates between Cairo and said southeastern points.

"V. That the cost to defendants, respectively, in each instance, of transporting such shipments from East St. Louis to said southeastern points is the same whether the shipments are reconsigned at East St. Louis or not; that the higher transportation charge hereinbefore described is unreasonable; and that by reason of the premises each of said defendants has subjected and still is subjecting complainant and its traffic to the payment of unreasonable and unjust rates of transportation and to undue and unreasonable prejudice and disadvantage, and has given, and still is giving, to said other shippers and their traffic undue and unreasonable preferences and advantages, in violation of the provisions of the Act to regulate commerce, particularly, Sections 1, 2 and 3 thereof."

Plaintiff in error answered separately:

"III. It admits the allegations contained in paragraph III of said complaint.

"IV. It has no information or knowledge sufficient to form a belief as to the truth of the allegations contained in the fourth paragraph of said complainant in so far as same relates to various shipments made by complainant, but in so far as said allegations refer to its tariff for reconsignment this respondent admits same.

433 "V. This respondent denies the allegations contained in paragraph V of said complaint.

"Further answering paragraph V of said complaint, this respondent alleges that the reconsignment privilege allowed at St. Louis and East St. Louis involves greater cost to this respondent and other railroad companies in the handling of said traffic than is incident to through shipment of same. For with reference to traffic which is reconsigned there is additional switching, greater delay of cars, extra expense in maintenance of clerical force required by taking up the expense bills of the carrier bringing the traffic to East St. Louis, the issuance of new bills of lading, new way bills, etc. There is also extra expense involved in reloading and also the increased probability of congestion in the freight yards, etc.

"Further answering said paragraph, this respondent alleges that the charge of reconsignment is in all cases practically one cent less than the rate from East St. Louis, proper, to the territory described in the complaint as 'southeastern points' and that this privilege of reconsignment is accorded to complainants and others at East St. Louis at a rate invariably less than the local shipper at East St. Louis

would be called upon to pay for the transportation of hay originating at East St. Louis and destined to said 'southeastern points.'

"It is true that the reconsignment privilege at East St. Louis is granted upon the condition that a somewhat greater rate shall be charged than the through rate from the point of origin to the point of destination when reconsignment is not availed of, but the benefits to the shipper and the additional expense and trouble entailed upon the carriers fully justify the slight additional charge."

The Commission's findings on the issues thus framed are embodied in the special finding of facts and judgment as rendered by the court below:

"And now again come the parties to this suit, plaintiff and defendant, by their respective attorneys, and the court having heretofore heard the arguments of counsel for the respective parties and taken the cause under advisement, and the court now being fully advised in the premises, on consideration thereof doth find that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its report and opinion in substance the following facts.

"1. Large quantities of hay produced in territory east, north and west of East St. Louis are consumed in Southeast-
434 ern Territory and much of it is carried through the East St. Louis gateway and passes over defendant's lines of railway from East St. Louis to points south of the Ohio river. With the exception of the Illinois Central, defendant's lines terminate at East St. Louis, and generally also lines of railway over which the hay is carried from said producing points to East St. Louis terminate at that point.

"2. For the transportation from East St. Louis to said southeastern points defendant applies a proportional rate, which is 2 cents per 100 pounds greater than the rate to said southeastern points from the Ohio river, if the hay is not unloaded at a warehouse in East St. Louis, regardless of whether or not the hay is shipped locally to East St. Louis, or through-billed from the point of origin to the point of final destination, and regardless of provisions in the tariffs concerning through billing; but if the hay is unloaded at a warehouse in East St. Louis defendant exacts for the transportation thereof from East St. Louis to said southeastern points a rate which is 4 cents per 100 pounds greater than the rate from the Ohio river to said southeastern points.

"3. Complainant operates two warehouses at East St. Louis, and most of the hay it handles it purchases on the track at East St. Louis, unloads, inspects, assorts and reloads at said warehouses, and sells at southeastern points, in competition with other hay dealers who do not unload the hay at East St. Louis. In such competition complainant is therefore prejudiced to the extent of 2 cents per 100 pounds by defendant's method of applying rates of transportation, as aforesaid. Defendant claims this 2-cent difference in rates is justified by difference in cost to it between the two kinds of transportation services it is called upon to perform.

"4. At East St. Louis transfers of loaded cars from the northern

to the southern lines and transfers of empty cars from the southern to the northern lines are generally made by a connecting railroad company, and the charge made by that company for such service is $4 per car when the hay is unloaded as aforesaid, but only $2 per car when the hay is not so unloaded, and in each instance this charge is paid by the carrier which hauls the hay south from East St. Louis.

"5. When the hay is unloaded, as aforesaid, an empty car must be furnished for the shipment by the carrier which hauls the hay south from East St. Louis, and the service of so furnishing is fairly worth from 40 to 60 cents per car.

435 "6. The car is in use from 2 to 3 days longer when the hay is unloaded, as aforesaid, than when it is not so unloaded, and a fair compensation for such use is 20 cents per day.

"7. When hay is unloaded and reloaded at warehouses, as aforesaid, the time consumed in doing the work averages from 6 to 8 hours, but the expense of such unloading and reloading is borne entirely by the shipper.

"8. Shipments of hay to which the rate of 2 cents per 100 pounds above the rate from the Ohio river is applied, as aforesaid, and which are not unloaded at East St. Louis warehouses, are frequently transferred from one car to another in the railroad yards at East St. Louis, either because cars in which the hay is shipped to East St. Louis from the north are out of repair, or because the northern lines are not willing to allow cars to go south from East St. Louis. The expense of such transfer is from $1.25 to $1.50 per car, and this expense is entirely borne by the carrier which hauls the hay south from East St. Louis.

"9. The transfer charge of $4 per car above mentioned was formerly $3 per car, and the transfer charge of $2 per car above mentioned was formerly $1.50 per car.

"10. The weight of hay in cars shipped, as aforesaid, from East St. Louis to southeastern points is from 1000 to 2000 pounds greater when the hay is reloaded at East St. Louis warehouses than when it is not so reloaded. This is an advantage in favor of the reconsigned hay.

"11. Cars from the north, after being unloaded at warehouses as aforesaid, are frequently reloaded for the south, thus avoiding expense to the southern line of placing an empty car and subtracting perhaps a day from the additional time of the car service.

"12. That, taking everything into account, the average additional expense to southern lines in case of reconsigned hay will not exceed that of direct through shipments by more than $2 to $2.50 per car, which is equivalent on the average loading of hay to about 1 cent per 100 pounds.

"13. Much of the hay which actually passes through East St. Louis might reach its southern destination via other gateways. Hay grown in different sections also competes via these other gateways in the south with that which does or might pass through East St. Louis. These gateways are Cincinnati, Louisville, Evansville, Cairo, Mem-

phis, Nashville, and perhaps others. The testimony showed
436 that at all these points hay could be stopped off, unloaded, and treated as the complainant handles its hay at East St. Louis, without the imposition of any charge in addition to the through rate. The testimony showed that these markets all competed with East St. Louis, but the force of that competition did not appear.

"14. That complainant actually paid to the Southern Railway Company on reconsigned shipments of hay, at the rate of 2 cents per 100 pounds, the difference between the reconsigning rate and the rate on hay not reconsigned, the sum of $3,144.17.

"And from the evidence heard and adduced on the trial of this cause in this court, the court finds that the said findings of fact by the said Interstate Commerce Commission are supported and justified by the said evidence, and

"It is ordered that the said findings of fact, as above recited and set out, be and the same are adopted as the special findings of fact of the court, and that the same be set out in the record of this court accordingly.

"It is therefore considered, ordered and adjudged by the court that the plaintiff herein have and recover of the defendant herein the sum of one thousand six hundred and fifty nine and 41/100 ($1659.41) dollars, the same being the amount of reparation awarded by the said Commission to the plaintiff against the defendant, with five per cent. interest from the date of said award; and it is further ordered and adjudged by the court that the plaintiff have and recover of the defendant its costs herein to be taxed, including a reasonable attorneys' fee to be hereafter fixed, and that execution issue against the defendant for the amount of the said judgment and the said costs."

Section 1 of the act to regulate commerce, so far as it pertains to transportation charges, reads as follows:

"All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful."

Section 2 provides: "That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect or receive from any person or persons a greater or less compensation for
437 any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful."

And the first paragraph of section 3 provides: "That it shall be unlawful for any common carrier subject to the provisions of this

act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

BAKER, *Circuit Judge,* delivered the opinion of the court:

Of the seventy assignments of error the majority present nothing for our consideration. Many of them are addressed to the refusal of the court to "hold" certain "propositions of law" which were submitted to the court in writing by plaintiff in error, as though the court as judge were required to give instructions to the court as jury. *Streeter v. Sanitary District,* 133 Fed. 124. Other assignments are based on the court's declining to entertain certain proposed findings of fact submitted in writing. Parties have no right to require a Federal court, in hearing a law case without a jury, to make a special finding. If the finding is general, a writ of error reaches only "the rulings of the court in the progress of the trial;" "and when the finding is special, the review may extend to the determination of the sufficiency of the facts found to support the judgment." Sec. 700 U. S. Rev. Sts.

Exception was taken to receiving the Commission's report in evidence. Sec. 14 provides "that whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commission are based, together with its representation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured, and such findings so made shall thereafter in all judicial proceedings be deemed *prima facie* evidence as to each and every fact found." The findings and the conclusions of the Commission were embraced in an opinion prepared by one of the members. If this case had been tried before a jury, it might have been the court's duty to separate the findings of fact from matters of opinion and to instruct the jury to disregard the latter (*Western N. Y. & P. Rld. Co. v. Penn. Refining Co.,* 137 Fed. 343), but such a rule is inapplicable to a trial before the court alone.

438 Over plaintiff in error's objection evidence was received that at markets other than East St. Louis the "reconsigning" privilege was granted without charge. If it be conceded that this evidence was not within the issues, the ruling would not necessarily afford a ground for reversal. To constitute prejudicial error when an action at law is tried by the court without a jury, the evidence improperly admitted must have entered into the result at which the trial court arrived. *Streeter v. Sanitary District,* 133 Fed. 124. Here the record affirmatively shows that neither the Commission nor the Circuit Court based any part of the judgment on the objectionable evidence.

The finding that the just and reasonable charge for the reconsigning privilege at East St. Louis was one cent a hundredweight is

challenged as being unsupported by evidence on the part of defendant in error and contrary to uncontradicted evidence on the part of plaintiff in error. Plaintiff in error's evidence was not uncontradicted, for in the Circuit Court the finding of the Commission was *prima facie* evidence of its own truth. But going beyond that, the shipper had evidence in the way of car rentals and switching charges made by railroads against each other at East St. Louis, which supported the finding that anything in excess of one cent a hundredweight was unjust and unreasonable. It is not our function to balance this against the carrier's method of figuring that two cents a hundredweight was a just and reasonable charge.

The remaining question presented by any proper assignment of error is whether the finding supports the judgment. Hay that comes into East St. Louis by boat or by wagon has to pay plaintiff in error, whose Northwestern terminus is East St. Louis, a local rate of five cents a hundredweight to the Ohio river. Plaintiff in error is not obliged to do business beyond its own tracks; but if it does it can not make its voluntary undertakings the ground for unreasonable rates and unjust discriminations and undue disadvantages. Shipments that originate at East St. Louis can not avoid the Southeastern railroads that begin there; but shipments that originate in Northwestern territory may go by other routes. To increase its traffic plaintiff in error offers to take hay of Northwestern origin from connecting roads and carry it at cheaper rates, with or without the reconsigning privilege, than it carries hay of East St. Louis origin. The rates on through business do not prove that the local rate is unreasonable; and on the other hand the local rate can throw no light on the justice or injustice of discriminations between shipments of Northwestern hay of the same origin and destination. The local rate has nothing to do with the case as we view it. The comparison is between the through rate without the reconsigning privilege and the through rate with the reconsigning privilege. The complaint concedes, by not denying, that the through rate, aside from the reconsigning privilege, is just and reasonable. The attack is upon the charge exacted for the reconsigning privilege and upon that alone. As we have already indicated, plaintiff in error is engaging in a business which it could not have been compelled to undertake; but, undertaking it, it brings itself within the requirements of the Act to Regulate Commerce. The finding, in our opinion, supports the conclusion that the exaction is in violation of section 1, as being excessive, and thereby produces unjust discriminations and undue disadvantages in violation of sections 2 and 3.

The judgment is affirmed.

439 And afterwards, on the same day, to-wit: On the sixteenth day of April, 1907, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

TUESDAY, *April* 16, 1907.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present: Hon. Peter S. Grosscup, Circuit Judge presiding.
Hon. Francis E. Baker, Circuit Judge.
Hon. William H. Seaman, Circuit Judge.
Hon. Christian C. Kohlsaat, Circuit Judge.
Edward M. Holloway, Clerk.
Luman T. Hoy, Marshal.
Before: Hon. Francis E. Baker, Circuit Judge.
Hon. William H. Seaman, Circuit Judge.
Hon. Christian C. Kohlsaat, Circuit Judge.

1329.

SOUTHERN RAILWAY COMPANY
vs.
ST. LOUIS HAY & GRAIN COMPANY.

Error to the Circuit Court of the United States for the Eastern District of Illinois.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Eastern District of Illinois and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that judgment of the said circuit court in this cause, be, and the same is hereby affirmed with costs.

440 And afterwards, to-wit: On the fourteenth day of May, 1907, in the October term last aforesaid, came the Plaintiff-in-Error, by its counsel, Mr. Claudian B. Northrop and Mr. Edward C. Kramer, and filed its petition for a writ of error, which petition is in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit.

SOUTHERN RAILWAY COMPANY, Plaintiff in Error,
vs.
ST. LOUIS HAY & GRAIN COMPANY, Defendant in Error.

Petition for Writ of Error.

And now comes Southern Railway Company, Plaintiff in Error, herein, and says that on the 16th day of April, 1907, the United States Circuit Court of Appeals for the Seventh Circuit rendered a judgment herein in favor of St. Louis Hay & Grain Company and against Southern Railway Company, Plaintiff in Error, affirming a judgment of the United States Circuit Court for the Eastern District

of Illinois, adjudging that St. Louis Hay & Grain Company recover of Southern Railway Company one thousand six hundred and fifty-nine dollars and forty-one cents ($1659.41) with interest and costs and that execution issue therefor, in which judgment of said Circuit Court of Appeals for the Seventh Circuit, and the proceedings had therein in this case certain errors were committed to the prejudice of Southern Railway Company, and all of which will more in detail appear from the assignment of errors which is filed with this petition.

That this case arose under the Act to Regulate Commerce
441 approved February 4, 1887, and amendments thereto, and is a proper case to be reviewed by the Supreme Court of the United States upon writ of error.

Wherefore, Plaintiff in Error, Southern Railway Company, prays that a writ of error be allowed in the above entitled cause directing the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit to send the record and proceedings in said cause, with all things concerning the same, to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herewith filed by said Plaintiff in Error be reviewed, if error be found, corrected according to the laws and customs of the United States; also that an order may be made fixing the amount of security which plaintiff in Error, Southern Railway Company, shall give and furnish upon such writ of error; that the bond so given be made to operate as a supersedeas bond, and that such other and further proceedings may be had which may be proper in the premises.

SOUTHERN RAILWAY COMPANY,
By CLAUDIAN B. NORTHRUP,
EDWARD C. KRAMER,
Attorneys for Plaintiff in Error.

Allowed May 4, 1907.

WILLIAM R. DAY,
Associate Justice of the
Supreme Court of the United States.

Endorsed: Filed May 14, 1907. Edward M. Holloway, Clerk.

And afterwards, on the same day, to-wit: On the fourteenth day of May, 1907, in the October term last aforesaid, came the Plaintiff in Error, by its counsel Mr. Claudian B. Northrop and Mr. Edward C. Kramer, and filed in the office of the clerk of this court its Assignment of Errors, which Assignment of Errors is in the words and figures following, to-wit:

442 In the United States Circuit Court of Appeals for the Seventh Circuit.

SOUTHERN RAILWAY COMPANY, Plaintiff in Error,
vs.
ST. LOUIS HAY & GRAIN COMPANY.

Assignment of Errors.

Southern Railway Company, Plaintiff in Error, by Claudian B. Northrop and Edward C. Kramer, its attorneys, says that in the decree rendered by the United States Circuit Court of Appeals for the Seventh Circuit in the above entitled cause on the 16th day of April 1907, and in the record and proceedings in said cause in said Court, there is manifest error, in this, to-wit:

First.

That said Circuit Court of Appeals erred because it failed to adjudge that the Circuit Court of the United States for the Eastern District of Illinois was in error in rendering a decree in favor of St. Louis Hay and Grain Company, plaintiffs below, on or about the 25th day of June A. D. 1906.

Second.

That said Circuit Court of Appeals erred in not reversing said decree rendered in said cause, on or about June 25th, 1906, by said Circuit Court of the United States for the Eastern District of Illinois.

Third.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in admitting in evidence the report and opinion of the Interstate Commerce Commission in the case of St. Louis Hay & Grain Company *vs.* Mobile & Ohio
443 Railroad Company, Illinois Central Railroad Company, Louisville & Nashville Railroad Company and Southern Railway Company, decided May 15th, 1905.

1. Because the Commission in said opinion did not pass upon the issues presented to it in said cause.

2. Because the issues in said case presented the question of the reasonableness and justness of the reconsigning rate complained of on hay from East St. Louis to Southeastern points which said issue was material and one of the principal issues in said cause, and was not passed upon and determined by said Interstate Commerce Commission.

3. Because said Report and Opinion of said Commission does not find the facts involved in said matter before said Commission as required by Section 16 of the Act to Regulate Commerce.

4. Said Report and Opinion cannot be introduced as *prima facie* evidence of any matters involved before said Commission because

the facts are not found by the Commission as required by the Act to Regulate Commerce.

5. Because said Report and Opinion fails to show what the issues in the case before the Interstate Commerce Commission were, and what facts the Commission found in regard to such issues and said Report and Opinion fails to make suitable reference to the evidence adduced before the Interstate Commerce Commission, in regard to any particular question where there was a conflict of evidence showing how the Commission settled any disputed fact; and because said Report and Opinion fails to state as a fact whether or not there was any undisputed evidence in reference to any of the facts.

6. Because said Report and Opinion of the Commission is wholly irrelevant to the issues made by the pleadings before this Court in this case and makes no reference whatever to the main and material issue in this cause, to-wit: the reasonableness and justness of the reconsigning rate from East St. Louis to Southeastern points.

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7. Because said Report and Opinion cannot be introduced as *prima facie* evidence of any matter involved in this suit.

Fourth.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in admitting over the objection of Southern Railway Company, the following testimony of the witness T. C. Powell, on cross-examination by the St. Louis Hay & Grain Company.

Q. Have you any control whatever over this traffic at Louisville, so you can charge a man any more when he reconsigns it, when he unloads it, than you could if he simply had the car transported in there and afterwards transported to Atlanta? Could you make any distinction; do you make any distinction? Does the man who reconsigns at Louisville have to pay anything for it?

A. Yes, sir, because I have stated, the rate to Louisville proper is higher than 13 cents, in my opinion. If it is 16 cents, as it probably is, about 16, he pays about 33 cents on a reconsigned shipment. Then on shipments moving direct from Bowen through East St. Louis to Louisville and Atlanta, we have certain rules for reconsigning the car at Louisville, which are filed with the Commission, and which provided from certain Illinois territory a reconsigning rate of 22 cents at the time of this complaint; certain Indiana territory a rate of 24 cents, and from certain other territory a rate of 23 cents; and from certain Illinois territory there would be a rate of 23 cents. These are all covered by tariffs filed with the Interstate Commerce Commission. A reconsigned shipment at Louisville invariably pays, so far as we are concerned, the regular local rate into Louisville, whatever that may be.

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Fifth.

That the said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in admitting over the objection of Southern Railway Company the following testimony of the wit-

ness, T. C. Powell, on cross examination by the St. Louis Hay & Grain Company:

Q. Then you are willing to state to this Court that the man who reconsigns at Louisville is charged for that privilege the same way as the man who reconsigns at East St. Louis?

A. He is charged for the privilege, but not exactly the same way.

Sixth.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in admitting over the objection of Southern Railway Company the following testimony of the witness T. C. Powell, on cross examination by St. Louis Hay & Grain Company:

Q. Explain just what is done.

A. At East St. Louis we fix the reconsigning rate at 28 cents from East St. Louis to Atlanta. In order to get that rate he must produce an expense bill showing that he has paid freight into East St. Louis, and on that evidence he is given the benefit of a rate one cent less than the East St. Louis proper rate. On the other hand, at Louisville, we have by publication established several different territories of origin; the rate varies according to the point of origin shown on the expense bill. I mean the rate south of the Ohio River earned by the Southern from Louisville to the destination. If that shipment originates west of the Mississippi River we do not carry the charges paid to Louisville; we simply charge from Louisville to Atlanta 21 cents; if it originates in Illinois, we will say Bowen, we charge him 22 cents if it originates in certain territory in Indiana we charge him 23 cents if it originates in certain other territory in Indiana we charge 24 cents.

Seventh.

That the said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in admitting over
446 the objection of Southern Railway Company the following testimony of the witness E. K. Voorhees, on cross examination by St. Louis Hay & Grain Company:

Q. Did that privilege of unloading and loading (at Memphis) again make any difference in the through rate from one point to another?

A. It didn't in some territory; in some others it did.

Eighth.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in admitting over the objection of Southern Railway Company the following testimony of the witness E. K. Voorhees on cross examination by St. Louis Hay & Grain Company:

Q. Do you grant a reconsigning privilege at Memphis?

A. No sir, not on hay.

Ninth.

That the said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in admitting over the objection of Southern Railway Company, the following testimony of the witness Joseph M. Denyven; on cross-examination by St. Louis Hay & Grain Company:

Q. Do you permit reconsignments at Cairo?

A. On hay?

Q. Yes?

A. No sir.

Tenth.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in admitting over the objection of Southern Railway Company, the following testimony of the witness Joseph M. Denyven, on cross examination by St. Louis Hay & Grain Company:

Q. You have answered in reference to a man taking a car
447 down there (Cairo, Illinois) and unloading the hay into another car and sending it along. Suppose he took the car down there and did not unload it, but sent it along, would not the through rate be exactly the same as though he unloaded it?

A. Well, the through rate on a car that was not unloaded would be whatever the sums of the rates might be.

Q. So he would not pay any more if he unloaded than if he did not unload it?

A. Well, he would not pay any more than the combination.

Eleventh.

That the said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in admitting over the objection of Southern Railway Company the following testimony of the witness Robert L. McKellar, on cross examination by St. Louis Hay & Grain Company:

Q. Could a man ship a carload of hay to Louisville from this section of Illinois and then load the hay into other cars and send the second car to a point in the southeast. Was that the practice?

A. Let me understand the question. You want to know what is the movement of a car at Louisville; go into a warehouse there and then reship the car from Louisville to the southeast?

Q. Yes?

A. It think it may be correctly said that there has been such a movement, although I will add that I think it is very lately.

Q. When they do unload it in that way is the through rate from the point of origin any more than it would be if they had not unloaded it?

448 A. Depend on where it came from. If it comes from a point that there is only one rate into Louisville, it will pa whatever the local rate may be from Louisville to final destination. If it comes from a point that there is only one rate into Louisville, say six cents or 9 cents per 100 pounds, if it gets into Louisville it

would have to pay that 9 cents; and if it goes out by the Southern it will pay whatever the local rate may be from Louisville to final destination.

Twelfth.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in admitting over the objection of Southern Railway Company the following testimony of the witness J. R. Peachy, on cross examination by St. Louis Hay & Grain Company;

Q. Well, if it is true at the present time that East St. Louis dealers pay 2 cents, while Ohio River points and other points on your lines are allowed the privilege of reconsigning without extra charge, that would put the East St. Louis dealers at a disadvantage compared with the dealers at these other points, would it not?

A. Well, it might. Depends entirely upon the conditions presented at East St. Louis. The man who handles hay at East St Louis warehouses has the benefit of other large markets, East St. Louis and St. Louis; he tests these markets and if he prefers to get a better price by shipping to the southeast, he ships to the southeast, but the man at Cairo has no market to test, and therefore very little hay comes into Cairo that is unloaded and reloaded. The rates break at Cairo. You cannot charge a man any more than the local rate to Cairo and the local rate out. The Cairo man has no large market, as the East St. Louis man has.

449 Thirteenth.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in admitting over the objection of Southern Railway Company the following testimony of the witness James W. Dye, for St. Louis Hay and Grain Company.

Q. That is not the question, I asked you whether they do pay anything extra for the reconsigning privilege there (referring to points on the Ohio River, Memphis and Nashville)?

A. No, Sir, they do not.

Fourteenth.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in admitting over the objection of Southern Railway Company, the following testimony of the witness, James W. Dye, for St. Louis Hay and Grain Company:

Q. Where is it they do not pay anything extra? (meaning extra for reconsigning)

A. Nashville, Tennessee; Cairo, Illinois; Evansville, Indiana; Memphis, Tennessee; Cincinnati, Ohio; and I believe Louisville, Kentucky, I am not sure.

Fifteenth.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in admitting over the objec-

tion of Southern Railway Company the following testimony of the witness James W. Dye, for St. Louis Hay & Grain Company:

Q. Are there dealers located at those points (referring to the points mentioned in the answer last above quoted) that is, dealers in hay in the same way you do, there?

A. Identically the same.

450 Q. Shipping to the same markets in the Southeast?

A. Yes sir.

Q. In competition with you?

A. Very much competitors both buy- and selling; they buy in my territory and sell in our Territory.

Sixteenth.

That the said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in admitting over the objection of Southern Railway Company the following testimony of the witness William J. Edwards, for St. Louis Hay & Grain Company:

Q. What is the fact about reconsignments down there, (meaning Nashville, Tennessee) Is there any reloading of hay done?

A. Reconsigning is permitted.

Q. Is there any extra charges made over the charge for through shipments; anything that comes in?

A. No sir, there is not.

Seventeenth.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in admitting over the objection of Southern Railway Company the following testimony of the witness, W. B. Harrison, for St. Louis Hay & Grain Company:

Q. Is there any charge for reconsigning at these points (Referring to Ohio River Points and Louisville and Memphis)

A. No sir, none that I know of.

Q. How does it affect dealers in hay at East St. Louis?

A. It is a handicap for them in competing, especially with the Nashville Gateway of 2 cents per 100 pounds.

451 Q. Where do they compete.

A. In Southeast and Carolina territories.

Q. Do they also buy in the same markets north of East St. Louis?

A. Yes sir.

Eighteenth.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in admitting over the objection of Southern Railway Company, the following testimony of the witness, E. L. Bartlett, for St. Louis Hay & Grain Company:

Q. Do you know whether or not any extra charge is made for the reconsigning privilege at Ohio River points, and Nashville and Memphis?

A. Well, there is 2 cents per 100 pounds; 2 cents.
Q. At these points? At Ohio River points?
A. No there is no extra charge there.
Q. How does it affect dealers at East St. Louis?
A. We are at a disadvantage. We are laboring here under advantage of about 2 cents per 100 pounds.
Q. On that acount?
A. On that account, Yes sir. We are competing with them in Southeastern territory and the Carolinas.
Q. Also competing with them in buying in the territory north of East St. Louis?
A. Yes sir. There is where we receive most of our hay.

Nineteenth.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in overruling and denying the motion offered by Southern Railway Company at the close of all the evidence in the above entitled cause to strike out from the
452 evidence and exclude from consideration of said case the Report and Opinion of the Interstate Commerce Commission introduced by St. Louis Hay and Grain Company and marked "Exhibit B" in its testimony in said Circuit Court, for the reason that said Interstate Commerce Commission, by said Report and Opinion, did not find the facts involved in said matter before said Interstate Commerce Commission, as required by Section 16 of the Act to Regulate Commerce, and also to strike out from the evidence and exclude from the consideration of this case all of the testimony introduced herein showing, or tending to show, that hay may be reconsigned at Cincinnati, Louisville, Evansville, Cairo, Memphis, Nashville, or at any or either of said places, without extra charge, and also to strike out all of the testimony introduced in evidence in reference to notations, or other data, contained in tariffs to which Southern Railway Company is not a party, which said motion is in words and figures as follows, to-wit:

UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

In the Circuit Court of the United States for the Eastern District of Illinois, to the May Term, A. D. 1906.

ST. LOUIS HAY & GRAIN COMPANY, Petitioner,
vs.
SOUTHERN RAILWAY COMPANY, Defendant.

Suit to Collect Reparation Fixed by Order of the Interstate Commerce Commission.

And now at the close of all the evidence offered in the above entitled suit, comes the defendant, Southern Railway Company, by

Claudian B. Northrop and Edward C. Kramer, its attorneys, and moves the Court to strike out from the evidence and exclude
453 from consideration of this case, the Report and Opinion of the Interstate Commerce Commission, introduced by petitioner herein, and marked "Exhibit B" of its testimony, for the reason that sai- Interstate Commerce Commission by said Report and Opinion did not find the facts involved in said matter before said Commission as required by Section 16 of the Act to Regulate Commerce.

Because said report and opinion cannot be introduced as *prima facie* evidence of any matters involved before said Commission because the facts are not found by the Commission as required by law.

Because said Report and Opinion fails to show that the issues in the case before the Interstate Commerce Commission were, and what facts the Commission found in regard to such issues and said Report and Opinion fails to make suitable reference to the evidence adduced before the Interstate Commerce Commission, in regard to any particular question where there was a conflict of evidence showing how the Commission settled any disputed fact; because said Report and Opinion failed to state as a fact whether or not there was any undisputed evidence in reference to any of the facts.

Because said Report and Opinion of the Commission is wholly irrelevant to the issues made by the pleadings before this Court in this case and makes no reference whatever to the main and material issue in this cause, to-wit, the reasonableness and justness of the reconsigning rate from East St. Louis to Southeastern points.

Because said Report and Opinion cannot be introduced as *prima facie* evidence of any matter involved in this suit,

And to strike out from the evidence and exclude from consideration of this case all of the testimony introduced herein showing or tending to show that hay may be reconsigned at Cincinnati, Louisville, Evansville, Cairo, Memphis, Nashville or at any or either
454 of said places without extra charge, because the petition filed before the Interstate Commerce Commission did not allege any undue or unreasonable prejudice or disadvantage against East St. Louis or against any person there located, and did not allege any undue or unreasonable preference or advantage in favor of said Ohio and Mississippi River Crossings or in favor of any persons therein located, with reference to reconsignment charges, and no such issues were involved before the Interstate Commerce Commission, and none are involved here.

And to strike out all the testimony introduced in evidence in reference to notations or other data contained in tariffs to which Southern Railway Company is not a party. Because the Commission in its Report and Opinion found that no such issues was presented to it for trial.

CLAUDIAN B. NORTHROP,
EDWARD C. KRAMER,
Attorneys for Defendant.

Because said Report and Opinion of the Interstate Commerce Commission introduced in evidence by St. Louis Hay & Grain Company and marked "Exhibit B" of its testimony in said Circuit Court, does not contain a finding of facts involved in said matter before said Commission as required by Section 16 of the Act to Regulate Commerce; and because said Report and Opinion is not proper and competent evidence to be introduced as *prima facie* evidence of matter involved before said Commission for the reason that the facts are not found and set forth in said Report and Opinion by said Commission as required by law; and because said Report and Opinion fails to show what the issues in the said cause before the Interstate Commerce Commission were and what facts the Commission found in regard to such issues; said Report and Opinion failed to make suitable reference to the evidence adduced before the Interstate
455 Commerce Commission in regard to any particular question where there was a conflict of evidence showing how the Commission settled such disputed fact; and because said Report and Opinion fails to state as a fact whether or not there was any disputed evidence in reference to any of the facts; and because said Report and Opinion of the Commission is wholly irrelevant to the issues made by the pleadings before this Court in this case and makes no reference whatever to the main and material issues in this case, to-wit, the reasonableness and justness of the reconsigning rate from East St. Louis to Southeastern points; and because said Report and Opinion cannot be introduced as *prima facie* evidence of any of the matters involved in this case and for these reasons ought to be excluded from the evidence.

Because the evidence introduced herein showing or tending to show that hay may be reconsigned at Cincinnati, Louisville, Evansville, Cairo, Memphis, Nashville or any or either of said places without extra charge, is wholly irrelevant to the issues involved in this case in this Court, because the petition filed before the Interstate Commerce Commission did not allege any undue or unreasonable prejudice or disadvantage against East St. Louis or against any person there located, and did not allege any undue or unreasonable preference or advantage in favor of said Ohio and Mississippi River Crossings, or in favor of any person thereat located, with reference to reconsignment charges on shipments of hay.

Because the tariff sheets and rates of other railway companies introduced in evidence in this case to which Southern Railway Company is not a party is irrelevant and incompetent testimony in this case.

456 Twentieth.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in overruling and denying the motion offered by Southern Railway Company at the close of all the evidence introduced on the trial of this cause to remand the cause tried before the Interstate Commerce Commission, upon which reparation was ordered and enforcement of which is sought in this

case, back to the Interstate Commerce Commission, which said motion is in words and figures as follows, to-wit:

UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

In the Circuit Court of the United States for the Eastern District of Illinois, to the May Term, A. D. 1906.

ST. LOUIS HAY & GRAIN COMPANY, Petitioner,
vs.
SOUTHERN RAILWAY COMPANY, Defendant.

Suit to Collect Reparation Fixed by Order of the Interstate Commerce Commission.

And now at the close of all the evidence in this case comes, defendant, Southern Railway Company, by its attorneys, Claudian B. Northrop and Edward C. Kramer, and moves the Court to remand the case tried before the Interstate Commerce Commission upon which reparation was ordered and enforcement of which is sought in this case, back to the Interstate Commerce Commission for the following reasons:

1. Because the issues presented to the Interstate Commerce Commission were not passed upon and determined by said Interstate Commerce Commission.

457 2. Because petition filed before the Interstate Commerce Commission by St. Louis Hay & Grain Company in said case, in the fifth paragraph thereof, alleges that the reconsigning rate charged on shipments of hay from East St. Louis to Southeastern Points is unreasonable and that by reason thereof petitioner has been compelled to pay unreasonable and unjust rates for the transportation of hay from East St. Louis to Southeastern points, in violation of Section 1 of the Act of Congress to Regulate Commerce. Which said allegation was denied by the defendant in paragraph 5 of its answer filed in said case before the Interstate Commerce Commission, and in addition to said direct denial is same paragraph 5 of defendant's answer, defendant, Southern Railway Company, alleged that the charge for reconsignment of hay from East St. Louis to Southeastern Points is in all cases invariably one cent less than the rate from East St. Louis proper to said Southeastern Points.

Said pleadings directly present the issue of the reasonableness and justness of the said reconsigning rate from East St. Louis to said Southeastern Points, which said issue was a material issue and was not passed upon by said Interstate Commerce Commission.

3. Defendant is entitled, as a matter of law, to have the Interstate Commerce Commission in the first instance pass upon all issues presented, and where the Interstate Commerce Commission fails to pass upon material issues presented to it, it is the duty of the Court to refer the matter back to the Interstate Commerce Commission to be proceeded in according to law.

4. Because said Interstate Commerce Commission did not make a report in writing in said case including findings of fact upon which the conclusions of the Interstate Commerce Commission were
458 based as required by law, but instead thereof filed a report made up of mere conclusions which report failed to show what the issues in the case were, and what facts the Interstate Commerce Commission found in regard to such issues, and because said report failed to make suitable references to the evidence adduced before the Interstate Commerce Commission in regard to the particular questions and issues presented; and because said report failed to show whether or not there was any conflict in proof before the Interstate Commerce Commission, and failed to make reference to the testimony taken before it showing how the Interstate Commerce Commission had settled any disputed facts; and because said report failed to state whether or not the evidence in regard to some or any of the issues was undisputed, that is to say, said report of the Interstate Commerce Commission failed to conform to the requirements of the law.

CLAUDIAN B. NORTHROP,
EDWARD C. KRAMER,
Attorneys for Defendant.

Because the Interstate Commerce Commission did not pass upon and determine the issues presented to it in this matter; and because the petition filed before the Interstate Commerce Commission in this matter in the 5th paragraph thereof alleges that the reconsigning rate charges on shipments of hay from East St. Louis to Southeastern ponts is unreasonable, and that by reason thereof petitioner, St. Louis Hay & Grain Company, has been compelled to pay unreasonable and unjust rates for the transportation of hay from East St. Louis to Southeastern points in violation of Section 1 of the Act to Regulate Commerce, which allegation was denied by defendant, Southern Railway, in the 5th paragraph of the answer filed by it before the said commission, and the pleadings in said matter before
459 the said Commission directly presented the issue of the reasonableness and justness of said reconsigning rate from East St. Louis to Southeadtern Points, which said issue was a material one and was not passed upon by said Commission.

Because Southern Railway Company is entitled as a matter of law to have the Interstate Commerce Commission in the first instance pass upon all issues presented, and where the Interstate Commerce Commission fails to pass upon material issues presented to it, it is the duty of the Circuit Court of the United States in a suit brought to enforce reparation made by the Commission to refer the matter back to the Commission to be proceeded in according to law.

Because said Commission did not make a report in writing in the case before it including findings of fact upon which the conclusions of the Commission were based as required by law, but instead thereof filed a report made up of mere conclusions which report failed to show what the issues in the case were and what facts the Interstate Commerce Commission found in regard to such issues; and because

said report failed to make suitable reference to the evidence adduced before the Interstate Commerce Commission in regard to the particular questions and issues presented.

Because said report failed to show whether or not there was any conflict in the proof before it and failed to make reference to the testimony taken before it showing how it settled any disputed facts.

Because said report failed to state whether or not the evidence in regard to some or any of the issues was undisputed that is to say, said report of the said Commission failed to conform to the
460 requirements of law, and for these reasons this matter should be referred back to the Commission for further action.

Twenty-first.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in overruling and denying the motion offered by the defendant at the close of all the evidence introduced on the trial of said cause to find the issues herein in favor of the defendant, Southern Railway Company, and to render judgment herein in favor of Southern Railway Company for its costs in this cause expended, which said motion is in words and figures as follows, to-wit:

UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

In the Circuit Court of the United States for the Eastern District of Illinois, to the May Term, A. D. 1906.

ST. LOUIS HAY & GRAIN COMPANY, Petitioner,
vs.
SOUTHERN RAILWAY COMPANY, Defendant.

Suit to Collect Reparation Fixed by Order of the Interstate Commerce Commission.

And now at the close of all the evidence in the above entitled suit comes the defendant, Southern Railway Company by its attorneys, Claudian B. Northrop and Edward C. Kramer and moves the Court to find the issues herein in favor of the defendant, and render judgment herein in favor of the defendant for its costs in this cause expended, and for reason for said motion the defendant states that the evidence herein is wholly insufficient to sustain a finding and judgment in favor of the petitioner.

CLAUDIAN B. NORTHROP,
EDWARD C. ——.

461 Because all of the evidence which is tendered herewith shows that it is wholly insufficient to support a finding in favor of the St. Louis Hay & Grain Company and a judgment in its favor enforcing the order made by the Interstate Commerce Commission; and because said evidence conclusively shows that the Southern

Railway Company is entitled to a judgment dismissing the petition and for its costs in this cause expended.

Twenty-second.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in refusing to hold as law the Fourth proposition of law submitted by Southern Railway Company at the close of all the evidence introduced on the trial of this cause, which said proposition of law is in words and figures as follows, to-wit:

The Report of the Interstate Commerce Commission and its conclusions entitled "Report and Opinion of the Commission in St. Louis Hay & Grain Company *vs.* Mobile & Ohio Railroad Company *et al.*," introduced in evidence in this case in this Court by petitioner and marked petitioner's "Exhibit B," does not contain findings of fact and findings of fact are not so prepared and arranged in said Report as required by law so that said report can be introduced as evidence in this case.

Because the Report and Opinion of the Commission introduced as evidence therein as Petitioner's (St. Louis Hay & Grain Company) "Exhibit B" does not find the facts, and the facts are not so prepared and arranged in said report so that the same may be introduced as evidence.

Twenty-third.

That said Circuit Court of Appeals erred because it failed
462 to adjudge that the said Circuit Court erred in refusing to hold as law the seventh proposition of law submitted by the Southern Railway Company at the close of all the evidence introduced on the trial of this cause, which said proposition of law is in words and figures as follows, to-wit:

That one of the material issues made before the Commission in this case was whether or not the reconsigning rate from East St. Louis to Southeastern points was a reasonable and just rate; that this issue was a material one in this case, and the Commission did not pass upon and determine the same.

Because the petition filed before the Interstate Commerce Commission and filed herein as Petitioner's (St. Louis Hay & Grain Company) "Exhibit B" alleged in paragraph 5 thereof, that the reconsigning rate from East St. Louis to Southeastern points was unreasonable and unjust, which allegations in said petition was denied by the answer of the Southern Railway Company before said Commission, which issue was a material one and the Report and Conclusions of the Commission filed herein as Petitioner's "Exhibit B" shows that the Commission did not pass upon said issue.

Twenty-fourth.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in refusing to hold as law the ninth proposition of law submitted by Southern Railway Company

at the close of all the evidence introduced on the trial of this cause, which said proposition of law is in words and figures as follows, to-wit:

The petition filed before the Interstate Commerce Commission introduced herein as petitioner's "Exhibit A" in this case, does
463 not complain of any undue or unreasonable prejudice or disadvantage to the localities and markets of East St. Louis or St. Louis; nor of any undue or unreasonable preference or advantage to Cincinnati, Louisville, Evansville, Cairo, Memphis and Nashville, or either of any of them or other localities; and no issue of any undue or unreasonable prejudice or disadvantage against, or undue or unreasonable preference or advantage in favor of any localities or markets was presented to the Commission in said case for determination. And there is no such issue in this case before this Court.

Because in the petition introduced in evidence herein and marked "Exhibit A" there is no allegation of any undue or unreasonable prejudice or disadvantage against the markets and localities of East St. Louis, nor is there any allegation of any undue or unreasonable preference or advantage in favor of the markets and localities of Cincinnati, Louisville, Evansville, Cairo, Memphis and Nashville, or either or any of them or other localities; nor is there any allegation in the pleadings before this Court in reference to such matters, and no such issue is made by the pleadings in this Court.

Twenty-fifth.

That said Circuit Court of Appeals erred because it failed to adjudge that the Circuit Court erred in refusing to hold as law the nineteenth proposition of law submitted by Southern Railway Company at the close of all the evidence introduced on the trial of this cause, which said proposition of law is in words and figures as follows, to-wit:

St. Louis Hay & Grain Company in its petition filed before the Interstate Commerce Commission in this case alleges that the reconsigning rate on hay from East St. Louis to Southeastern points is
464 unreasonable and unjust. This allegation was denied by defendant, Southern Railway Company, in its answer filed before the Interstate Commerce Commission.

This issue of reasonableness is again made and raised by the pleadings in this Court.

On this issue the only question is the reasonableness of the entire charge to the party who is charged.

It is not competent for St. Louis Hay & Grain Company to dissect the accounts of Southern Railway Company, allow this item, disallow that and manipulate the accounts of the railroad in its own way.

The reasonableness of the total charge on reconsigned hay from East St. Louis to Southeastern Points is the sole question open on this issue; and such items as the alleged extra cost, charge, or expense of two cents per hundred pounds for transfer or reconsigning hay at East St. Louis, or such items as the divisions of the total through rate by and between the several carriers forming the through joint line from East St. Louis to Southeastern points or

such items as one cent bridge toll at Ohio River crossings, are in nowise material to the issue of the reasonableness of the total charge to the shipper for the total service of the transportation of hay reconsigned from East St. Louis to Southeastern Points.

It is not competent for the shipper to dissect and separate the several services of switching, transferring, side tracking, coupling and uncoupling cars, breaking up cuts of cars, making up trains, ferrying or bridging rivers, etc., at various junctions and other points on the through route; these items or similar items cannot be segregated from the whole by the shipper and in nowise concern him, the only question open to him being the reasonableness of
465 the total rate for the entire service rendered to him.

Because said proposition of law is involved in this suit. The evidence shows that the complainant, the St. Louis Hay & Grain Company, has segregated the division of the total through rate on reconsigned hay from East St. Louis to Southeastern points and attempted to confine the inquiry to the reasonableness of that portion of the through rate alone, testing same entirely by the reference to the cost of switching, transferring and delay of cars at East St. Louis and not taking into consideration the cost and expense of the service at other junction points or other places on the through line from East St. Louis to Southeastern Points, and not taking into consideration the cost and expense and value of the entire service for the entire haul.

Twenty-sixth.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in refusing to hold as law the sixth proposition of law as submitted by Southern Railway Company as applicable in this case, which said sixth proposition of law as submitted is in words and figures as follows, to-wit:

Where a petition and complaint is filed before the Interstate Commerce Commission under and by virtue of the Act to Regulate Commerce, and issues are made upon such petition and complaint, it is the duty of the Commission to pass upon each and every material issue made, and if the Commission upon an investigation makes an order for reparation and suit is brought in a Circuit Court of the United States to enforce such order, and it is there made to appear that said Commission did not pass upon each and every material issue made before the Commission, it is the duty of the Circuit Court of the United States to remand the case to the said Commis-
466 sion for further proceedings according to law.

And in modifying the said proposition of law as submitted, so as to read as follows, to-wit:

Where a petition and complaint is filed before the Interstate Commerce Commission under and by virtue of the Act to regulate Commerce and issues are made upon such petition and complaint, it is the duty of the Commission to pass upon each and every material issue made, and if the Commission upon an investigation makes an order for reparation and suit is brought in a Circuit Court of the United States to enforce such order, and it is there made to appear that said Commission did not pass upon each and every material issue

made before the Commission, it is the duty of the Circuit Court of the United States to refuse to enforce the order.

Because where a petition and complaint is filed before the Interstate Commerce Commission under and by virtue of the Act to Regulate Commerce, and issues are made upon such petition and complaint, it is the duty of the Commission to pass upon each and every material issue made, and if the Commission upon investigation makes an order for reparation and suit is brought in a Circuit Court of the United States to enforce such order, and it is there made to appear that said Commission did not pass upon each and every material issue made before the Commission, it is the duty of the Circuit Court of the United States, to remand the cause to the said Commission for further proceedings according to law, and because the said proposition of law as submitted is material to the issues involved in this case, and because the Southern Railway Company having presented to the Court on the trial of this cause a motion to remand same to
467 the Interstate Commerce Commission for further proceedings according to law, it was entitled to have the Court pass upon a proposition of law as to whether or not under the conditions named in said proposition of law, it was the duty of the court to remand the said case as herein stated.

Twenty-seventh.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in refusing to hold as law the eighteenth proposition of law as submitted by Southern Railway Company as applicable in this case, which said eighteenth proposition of law, as submitted, is in words and figures as follows, to-wit:

In determining the reasonableness and justness or unreasonableness and unjustness of a rate the shipper is only concerned in the total charge made and as to whether or not the charge as a whole is reasonable and just. He is not concerned in the various items making up the entire charge and cannot inquire into the reasonableness or unreasonableness of an item or items making up the entire charge.

And in modifying the said proposition, as submitted, so as to read as follows, to-wit:

In determining the reasonableness and justness or the unreasonableness and unjustness of a rate the shipper is only concerned in the total charge made and as to whether or not the charge as a whole is reasonable and just. He is not concerned in the various items making up the entire charge and cannot alone and independently inquire into the reasonableness or unreasonableness of an item or items making up the entire charge.

Because in determining the reasonableness and justness or unreasonableness and unjustness of a rate, the shipper is only con-
468 cerned in the total charge made, and as to whether or not as a whole is reasonable and just. He is not concerned in the various items making up the entire charge, and cannot inquire into the reasonableness or unreasonableness of an item or items making up the entire charge.

Because the said proposition as submitted is material to the issues

involved in this case, and because the proposition of law as modified by the Court unduly broadens the scope of the inquiry that a shipper may make into the reasonableness or unreasonableness of an item or items making up the entire charge.

Twenty-eighth.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in rejecting and refusing to find the first special finding of fact submitted by Southern Railway Company on the trial of this cause, which said first special finding of fact is in words and figures as follows, to-wit:

Petitioner, St. Louis Hay & Grain Company, has two warehouses at East St. Louis, Ill., one located immediately south of Eads Bridge between Front Street and the Mississippi River. This warehouse is on the tracks of the Wiggins Ferry Company, and is known as the Union Warehouse. The other warehouse is known as the National Warehouse and is located on the corner of 10th Street and the Southern Railway Company's tracks.

Because the said first special finding of fact is material to the issues involved in this case; because the said first special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said first special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this
469 cause do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said first special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said first special finding of fact so submitted by Southern Railway Company, nor do they contain the said first special finding of fact, nor the substance thereof.

Twenty-ninth.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in rejecting and refusing to find the second special finding of fact submitted by Southern Railway Company on the trial of this cause, which said second special finding of fact is in words and figures as follows, to-wit:

There are about 75 miles of switch tracks at East St. Louis of which the Southern Railway Company owns about 20 miles.

Southern Railway Company has tracks at East St. Louis which reach from a point above the Merchant's Bridge near what is known as the North Incline, running through East St. Louis to a point below East St. Louis which is known as the Dyke Yard, and at different points in East St. Louis are yards belonging to the Southern Railway Company, respectively known as Brooklyn Yards, Denverside Yards and Sixth Street Yards and the Dyke Yard, all necessary and

used for the purpose of switching cars from and to trains going to
the South and from and to various Industries located in
470 East St. Louis, Illinois. The switching and transfer situation
at East St. Louis is complicated.

Because the said second special finding of fact is material to the issues involved in this case; because the said second special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the second special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said second special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said second special finding of fact so submitted by Southern Railway Company, nor do they contain the said second special finding of fact nor the substance thereof.

Thirtieth.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in rejecting and refusing to find the third special finding of fact submitted by Southern Railway Company on the trial of this cause, which said third special finding of fact is in words and figures as follows, to-wit:

Rates south of the Ohio River are the foundation rates for hay
going from East St. Louis to southeastern territory.
471 Because the third special finding of fact is material to the
issues involved in this case; because the said third special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said third special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said third special finding of fact is material and necessary to be found and is material and necessary to a proper decision of the case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said third special finding of fact so submitted by Southern Railway Company, nor do they contain the said third special finding of fact, nor the substance thereof.

Thirty-first.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in rejecting and refusing to find

the fourth special finding of fact submitted by Southern Railway Company on the trial of this cause, which said fourth special finding of fact is in words and figures as follows, to-wit:

Grain and hay originating in the States of Ohio, Indiana, Illinois, Nebraska, Missouri, Kansas, Arkansas and Texas, is shipped into Southeastern Territory. This hay and grain crosses the Ohio River at the gateways of Cincinnati, Louisville, Evansville, Cairo, etc., and crosses the Mississippi River at the gateways of East St. Louis,
472 Cairo, Memphis, New Orleans, etc.

Because the said fourth special finding of fact is material to the issues involved in this case because the said fourth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said fourth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said fourth special finding of fact is material and necessary to be found and is material and necessary to a proper decison of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in said fourth special finding of fact so submitted by Southern Railway Company, nor do they contain the said fourth special finding of fact, nor the substance thereof.

Thirty-second.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in rejecting and refusing to find the fifth special finding of fact submitted by Southern Railway Company on the trial of this cause, which said fifth special finding of fact is in words and figures as follows, to-wit:

Southeastern Territory comprises nearly all of Alabama, part of Tennessee, all of Georgia, all of Florida, except the extreme western part of Florida, and part of South Carolina, Atlanta is a principal point in the Southeastern Territory.

473 Because the said fifth special finding of fact is material to the issues involved in this cause; because the said fifth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said fifth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said fifth special finding of fact is material and necessary to be found and is material and necessary to the proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in said fifth special finding of fact so submitted, by Southern Railway Company, nor do

they contain the said fifth special finding of fact, nor the substance thereof.

Thirty-third.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in rejecting and refusing to find the sixth special finding of fact submitted by Southern Railway Company on the trial of this cause, which said sixth special finding of fact is in words and figures as follows, to-wit:

East St. Louis is classed with St. Louis and together they constitute the largest primary hay market in the United States.

Because the said sixth special finding of fact is material to the issues involved in this case; because the said sixth special finding of fact is supported by the undisputed evidence introduced on
474 the trial of this case; because the said sixth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said sixth special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in said sixth special finding of fact so submitted by Southern Railway Company, nor do they contain the said sixth special finding of fact, nor the substance thereof.

Thirty-fourth.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in rejecting and refusing to find the seventh special finding of fact submitted by Southern Railway Company on the trial of this cause, which said seventh special finding of fact is in words and figures as follows, to-wit:

The defendant, Southern Railway Company, in the introduction of its evidence in this case used Atlanta, Ga., as a representative point in Southeastern Territory, with reference to local shipments of hay from East St. Louis to Southeastern Territory, and reconsigned shipments of hay from East St. Louis to Southeastern Territory and through shipments of hay originating at points north and East of East St. Louis and passing through East St. Louis to Southeastern Territory, and used Bowen, Ill., as a representative point in
475 through shipments of hay originating north and west of East St. Louis and passing through East St. Louis to Southeastern Territory.

Atlanta, Georgia, fairly represents points of consumption in Southeastern Territory, and Bowen, Illinois, fairly represents points of production north and west of East St. Louis, with reference to rates and shipments involved in this suit:

Because the said seventh special finding of fact is material to the issue involved in this case; because the said seventh special finding

of fact is supported by the undisputed evidence introduced on the trial of this case; because the said seventh special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said seventh special finding of fact is material and necessary to be found, and is material and necessary to a proper decision of this case; and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said seventh special finding of fact so submitted by Southern Railway Company, nor do they contain the said seventh special finding of fact, nor the substance thereof.

Thirty-fifth.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in rejecting and refusing to find the eighth special finding of fact submitted by Southern Rail-
476 way Company on the trial of this cause, which said eighth special fi*dn*ing of fact is in words and figures as follows, to-wit:

The rate on hay from the Ohio River crossings to Atlanta from June 1st, 1903 to Feb. 1st, 1905, was 24 cents per hundred pounds.

The defendant, Southern Railway Company, during said time had a local rate on hay from East St. Louis to Atlanta of 5 cents above the rates from the Ohio River crossings viz: 29 cents per hundred pounds and a reconsigning rate of 4 cents above the rate from Ohio River crossings, viz: 28 cents per hundred pounds and during said time accepted from other connecting railway lines a charge of 2 cents above the rates from Ohio River Crossings for its haul from East St. Louis to Southeastern points which was 26 cents per hundred pounds to Atlanta, on through shipments which had originated at points north and west of East St. Louis;

Because the said eighth special finding of fact is material to the issues involved in this case; because the said eighth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said eighth special fi*dn*ing of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contai- all that is material or necessary to be found; because said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said eighth special finding of fact is material and necessary to be found, and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said eighth
477 special finding of fact so submitted by Southern Railway Company, nor do they contain the said eighth special finding of fact, nor the substance thereof.

Thirty-sixth.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in rejecting and refusing to find the ninth special finding of fact submitted by Southern Railway Company on the trial of this cause, which said ninth special finding of fact is in words and figures as follows, to-wit:

That in all shipments in which defendant, Southern Railway Company, accepted a charge of 2 cents above the rates from Ohio River crossings for hauling hay from East St. Louis to points in Southeastern Territory they were shipments that had originated at points north and west of East St. Louis or beyond East St. Louis and were hauled into East St. Louis by a connecting carrier in which the connecting carrier presented to Southern Railway Company a way bill showing that the hay had originated at some point north or west or beyond East St. Louis and had been hauled into East St. Louis by said connecting carrier and was destined to it to some point in Southeastern Territory and said Southern Railway Company accepted the car or cars so delivered from such connecting carrier and hauled them to the point of destination, and accepted as its share of the entire charge a charge of 2 cents per hundred pounds above the rate from Ohio River crossings to points of destination, and in the entire transaction the Southern Railway Company dealt with and received its share of the through charges from the connecting carrier and had no transaction of any kind or character with the shipper and if the original bill of lading was not from the point of origin to point of final destination, or in other words the
478 point of destination was changed while the hay was in transit or after it had arrived at East St. Louis, this fact was not made known to Southern Railway Company:

Because the said ninth special finding of fact is material to the issues involved in this case; because the said ninth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said ninth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said ninth special finding of fact is material and necessary to be found, and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said ninth special finding of fact so submitted by Southern Railway Company, nor do they contain the said ninth special finding of fact nor the sustance thereof.

Thirty-seventh.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in rejecting and refusing to find the tenth special finding of fact submitted by Southern Railway Com.

pany on the trial of this cause, which said tenth special finding of fact is in words and figures as follows, to-wit:

In all cases in which Southern Railway Company charged the reconsigning rate of 4 cents above the rate from Ohio River
479 crossings to points in Southeastern Territory, they were cases in which the shipper presented to Southern Railway Company an expense bill showing that he had paid transportation charges on a carload of hay from some point of origin north or west or beyond East St. Louis to East St. Louis. Upon this evidence, Southern Railway Company billed a carload of hay for the shipper from East St. Louis to a point in Southeastern territory at the reconsigning rate and in the entire transaction dealt only with the shipper and had no transaction of any kind or character with a connecting carrier and these reconsignment charges were paid by the shipper to Southern Railway Company.

And in all such shipments the shipper was not compelled to ship out the identical hay that had been shipped in as shown by his expense bill, but he might ship any hay he had in his warehouse or other places in East St. Louis.

Because the said tenth special finding of fact is material to the issues involved in this case; because the said tenth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said tenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the court do not contain all that is material or necessary to a proper decision of the case; because the said tenth special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said tenth special finding of fact so submitted by Southern Railway Company, nor
480 do they contain the said tenth special finding of fact, nor the substance thereof.

Thirty-eighth.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in rejecting and refusing to find the eleventh special finding of fact submitted by Southern Railway Company on the trial of this cause, which said eleventh special finding of fact is in words and figures as follows, to-wit:

All of the tariffs introduced in evidence in this case which show that Southern Railway Company accepts a charge of 2 cents above the rates from the Ohio River crossings to Southeastern Territory on hay originating at points north or west or beyond East St. Louis and shipped directly through East St. Louis to points in Southeastern territory show such charge to be a division of the through rate;

Because the said eleventh special finding of fact is material to the issues involved in this case; because the said eleventh special find-

ing of fact is supported by the undisputed evidence introduced on the trial of this case; because the said eleventh special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material and necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said eleventh special finding of fact is material and necessary to be found, and is material and necessary to a proper decision of this case; and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the
481 said eleventh special finding of fact so submitted by Southern Railway Company, nor do they contain the said eleventh special finding of fact, nor the substance thereof.

Thirty-ninth.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in rejecting and refusing to find the twelfth special finding of fact submitted by Southern Railway Company on the trial of this cause, which said twelfth special finding of fact is in words and figures as follows, to-wit:

The reconsigning rate on hay of 4 cents above the rate from Ohio River crossings was made by and is the result of competition.

Because the said twelfth special finding of fact is material to the issues involved in this case; because the said twelfth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said twelfth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said twelfth special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said twelfth special finding of fact so submitted by Southern Railway Company, nor do they contain the said twelfth special finding of fact, nor the substance thereof.

482 Fortieth.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in rejecting and refusing to find the thirteenth special finding of fact submitted by Southern Railway Company on the trial of this cause, which said thirteenth special finding of fact is in words and figures as follows, to-wit:

That the rate on grain and hay from Ohio River crossings to Southeastern territory was made by and was the result of competi-

tion among rail lines hauling grain and hay from such Ohio River crossings to Southeastern territory, and the reconsigning rate of 4 cents above the rate from Ohio River crossings to Southeastern Territory was made by and was the result of competition among railway companies hauling grain and hay from East St. Louis to Southeastern territory;

Because the said thirteenth special finding of fact is material to the issues involved in this case; because the said thirteenth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said thirteenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said thirteenth special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said thirteenth special finding of fact so submitted by Southern Railway Company, nor do they contain the said thirteenth special finding of fact, nor the substance thereof.

483 Forty-first.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in rejecting and refusing to find the fourteenth special finding of fact submitted by Southern Railway Company on the trial of this cause, which said fourteenth special finding of fact is in words and figures as follows, to-wit:

The following are the distances by the various lines from and to points involved in this Controversy:

East St. Louis to Atlanta—Via L. & N.—N. C. & St. L.:

To Evansville	162	miles
" Nashville	157	"
" Chattanooga	151	"
" Atlanta	138	"
	608	"

Nashville to Atlanta—L. & N.—N. C. & St. L.:

L. & N.	157	miles
Total	446	"
N. C. & St. L.	289	"

Louisville to Atlanta—Sou. Ry.—C. N. O. & T. P.—W. & A.:

To Danville	94	miles
Chattanooga	222	"
Beyond	138	"
	454	

Cincinnati to Atlanta via I. C.—N. C. & St. L.:

I. C. to Martin	60	miles
N. C. & St. L. beyond	430	"
	490	"

Via I. C.—Sou. Ry. and Emory Gap:

I. C. to Nashville	196	miles
To Chattanooga	151	miles
Beyond	138	"
	485	"

484 Memphis to Atlanta via K. C. M. & B. and Sou. Ry.:

To Birmingham	251	miles
Sou. Ry.	167	"
	418	"

East St. Louis to Cairo	151	miles
East St. Louis to Evansville	162	"
East St. Louis to Louisville	271	miles

Because the said fourteenth special finding of fact is material to the issues involved in this case: because the said fourteenth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said fourteenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said fourteenth special finding of fact is material and necessary to be found and is material and necessary to a proper decision of the case; and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said fourteenth special finding of fact so submitted by Southern Railway Company, nor do they contain the said fourteenth special finding of fact nor the substance thereof.

Forty-second.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in rejecting and refusing to find

the fifteenth special finding of fact submitted by Southern
485 Railway Company on the trial of this cause, which said fifteenth special finding of fact is in words and figures as follows, to-wit:

St. Louis Hay & Grain Company frequently makes through shipments from point of original purchase to point of destination without reconsigning. The right of making through shipments from point of origin to a point of ultimate destination is open to St. Louis Hay & Grain Company without discrimination:

Because the said fifteenth special finding of fact is material to the issues involved in this case; because the said fifteenth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said fifteenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; and because the special finding of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said fifteenth special finding of fact so submitted by Southern Railway Company nor do they contain the said fifteenth special finding of fact nor the substance thereof.

Forty-third.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in rejecting and refusing to find
the sixteenth special finding of fact submitted by Southern
486 Railway Company on the trial of this cause, which said sixteenth special finding of fact is in words and figures as follows, to-wit:

The reconsigning rate of 4 cents above the rate from Ohio River crossings to Southeastern Territory is shown to be just and reasonable for the following reasons:

The evidence in this case shows:

1. That said reconsigning rate is the result of competition in the transportation of hay and grain by rail lines and the water lines.

2. That the rate on hay from East St. Louis to Atlanta since 1879 has been reduced from 54 cents per hundred pounds to 28 cents per hundred pounds.

3. That the reconsigning rate on hay from East St. Louis to Southeastern points is low when compared with the rate on hay in other localities where the circumstances and conditions are similar.

4. Because the rate on hay from East St. Louis to Southeastern Territory is affected by competition hay there meets in coarse foods and substitutes for hay.

5. That said rate is reasonable and just in the opinion of expert traffic men.

6. Because the rate on hay from East St. Louis to Southeastern points is affected by the competition that hay shipped to Southeastern

points has to meet in hay and other like products shipped from other markets.

7. Hauling grain is more remunerative to carriers than hauling hay and the reconsignment rates on hay and grain are the same, while in some other sections the rate on hay is from 25 to 50 per cent. higher than the rate on grain.

8. This rate has been made by the short lines. Southern Railway Company necessarily had to meet these rates or not participate in the traffic, and it is one of the long lines.

487 9. East St. Louis-St. Louis under said rates has grown to be the largest hay market in the United States.

Because the said sixteenth special finding of fact is material to the issues involved in this case; because the said sixteenth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said sixteenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material and necessary to a proper decision of this case; and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said sixteenth special finding of fact so submitted by the defendant, nor do they contain the said sixteenth special finding of fact, nor the substance thereof.

Forty-fourth.

The said Circuit Court of Appeals erred because it failed to adjudge and decree that said Circuit Court erred in rejecting and refusing to find the seventeenth special finding of fact submitted by the defendant on the trial of this cause, which said seventeenth special finding of fact is in words and figures as follows, to-wit:

A through shipment of hay from points north and west and beyond East St. Louis to Southeastern points received by Southern Railway Company from a connecting carrier at East St. Louis requires 2 necessary switching movements on the part of Southern Railway Company in receiving said car from the connecting carrier

488 and placing same in the train for the Southeast.

A reconsigned shipment from National Warehouse located on the line of Southern Railway Company in East St. Louis requires 3 necessary switching movements on the part of Southern Railway Company in placing the empty car at the warehouse, taking out the loaded car and placing it on the train for the Southeast. That a reconsigned shipment from Union Warehouse requires ten necessary switching movements in placing the empty car at the warehouse and receiving the loaded car and placing it in the train for the Southeast, 5 of these movements are made by the Wiggins Ferry Company.

Because the said seventeenth special finding of fact is material to the issues involved in this case; because the said seventeenth special

finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said seventeenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said seventeenth special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said seventeenth special finding of fact so submitted by Southern Railway Company, nor do they contain the said seventeenth special finding of fact, nor the substance thereof.

489 Forty-fifth.

That said Circuit Court of Appeals erred because it failed to adjudge and decree that said Circuit Court erred in rejecting and refusing to find the eighteenth special finding of fact submitted by Southern Railway Company on the trial of this cause; which said eighteenth special finding of fact is in words and figures as follows, to-wit:

The cost of a switching movement in the case of a reconsigned shipment to Southern Railway Company in East St. Louis and the cost of a switching movement in connection with through shipments in East St. Louis is 30 cents per movement, and Southern Railway Company pays to Wiggins Ferry Company $1.50 for the five movements made by it in a reconsignment shipment from the Union Warehouse over the lines of the Southern Railway Company.

Because the said eighteenth special finding of fact is material to the issues involved in this case; because the said eighteenth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said eighteenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said eighteenth special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in said eighteenth special finding of fact so submitted by Southern Railway Company, nor do they contain the said eighteenth special finding of fact nor the substance thereof.

490 Forty-sixth.

That said Circuit Court of Appeals erred because it failed to adjudge and decree that said Circuit Court erred in rejecting and re-

fusing to find the nineteenth special finding of fact submitted by the defendant, on the trial of this cause, which said *eight*eenth special finding of fact is in words and figures as follows, to-wit:

A car is in use in East St. Louis on an average of one day in a through shipment and a car is in use in East St. Louis on an average of five days in each reconsigned shipment.

Because the said nineteenth special finding of fact is material to the issues involved in this case; because the said nineteenth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said nineteenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said nineteenth special finding of fact is material and necessary to be found, and is material and necessary to a proper decision of the case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said nineteenth special finding of fact so submitted by Southern Railway Company, nor do they contain the said nineteenth special finding of fact, nor the substance thereof.

491 Forty-seventh.

That said Circuit Court of Appeals erred because it failed to adjudge and decree that said Circuit Court erred in rejecting and refusing to find the twentieth special finding of fact submitted by the defendant on the trial of this cause, which said twentieth special finding of fact is in words and figures as follows, to wit:

It costs Southern Railway Company 52 cents per day to actually maintain its freight cars.

Because the said twentieth special finding of fact is material to the issues involved in this case; because the said twentieth special finding of fact is supported by the undisputed evidence introduced on the trial of this cause; because the said twentieth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said twentieth special finding of fact is material and necessary to be found, and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said twentieth special finding of fact so submitted by the defendant, nor do they contain the said twentieth special finding of fact, nor the substance thereof.

Forty-eighth.

492 That said Circuit Court of Appeals erred because it failed to adjudge and decree that said Circuit Court erred in rejecting and refusing to find the twenty-first special finding of fact submitted by the Southern Railway Company on the trial of this cause, which said twenty-first special finding of fact is in words and figures as follows, to-wit:

75 cents per day is a fair and reasonable charge to make for a car while in use at East St. Louis in a reconsigned shipment:

Because the said twenty-first special finding of fact is material to the issues involved in this case; because the said twenty-first special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said twenty-first special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to a proper decision of the case; because the said twenty-first special finding of fact is material and necessary to be found, and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said twenty-first finding of fact so submitted by the defendant, nor do they contain the said twenty-first special finding of fact, nor the substance thereof.

Forty-ninth.

That said Circuit Court of Appeals erred because it failed to adjudge and decree that said Circuit Court erred in overruling and denying the motion of Southern Railway Company to set aside the judgment of the Court rendered herein and the general and special findings of fact herein, and the propositions of law found
493 herein, and made and entered by the Court in this suit, and to grant a new trial herein, which said motion is in words and figures as follows, to-wit:

UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

In the Circuit Court of the United States for the Eastern District of Illinois, to the May Term, A. D. 1906.

ST. LOUIS HAY & GRAIN COMPANY, Petitioner,
vs.
SOUTHERN RAILWAY COMPANY, Defendant.

Suit to Collect Reparation Fixed by Order of the Interstate Commerce Commission.

And now on this 25th day of June, A. D. 1906, comes the defendant, Southern Railway Company, by Claudian B. Northrop and Edward C. Kramer, its attorneys, and moves the Court to set aside that

judgment of the Court rendered herein, and the general and special findings of fact herein, and made and entered by the Court in this suit; and to grant a new trial herein, and for grounds of said action shows unto the Court the following:

1. The Court erred in admitting improper, irrelevant, immaterial and incompetent evidence on the trial of said cause over the objections of defendant (Southern Railway Company).

2. The Court erred in refusing to admit proper, relevant, material and competent evidence offered by the defendant on the trial of said suit.

3. The Court erred in refusing the 4th, 7th, 9th and 19th propositions of law submitted by the defendant, and each of them.

494 4. The Court erred in refusing the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th and 21st special findings of fact submitted by defendant, and each of them.

5. The Court erred in holding as law the propositions of law submitted by the petitioner, and each of them.

6. The Court erred in finding the special findings of fact submitted by petitioner, and each of them.

7. The general and special findings of fact found by the Court are contrary to and not supported by the evidence in the case.

8. The judgment and propositions of law held by the Court are not supported by the law in the case.

9. Because the Court erred in refusing defendant's motion to find the issues in this suit in favor of the defendant and to render judgment in favor of the defendant.

10. Because the Court refused defendant's motion to remand the case back to the Interstate Commerce Commission.

11. And for other good and sufficient reasons.

CLAUDIAN B. NORTHROP,
EDWARD C. KRAMER,
Attorneys for Defendant.

Fiftieth.

That said Circuit Court of Appeals erred because it failed to adjudge and decree that said Circuit Court erred in finding in its first special finding of fact that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and opinion in substance the following fact:

Large quantities of hay produced in territory east, north and west of East St. Louis are consumed in Southeastern Territory and

495 much of it is carried through the East St. Louis Gateway, and passes over the defendant's lines of railway from East St. Louis to points south of the Ohio River. With the exception of the Illinois Central, defendant's lines terminate in East St. Louis, and generally also, lines of railway over which the hay is carried from said producing points to East St. Louis terminate at that point: And in further finding that the said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding

of fact be adopted as a special finding of fact of this Court, and in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not, in its Report and Opinion, find said facts in substance, because there was no evidence introduced on the trial of this cause to support the same.

Fifty-first.

That said Circuit Court of Appeals erred because it failed to adjudge and decree that said Circuit Court erred in finding in its second special finding of fact that, on the hearing of the cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

For the transportation from East St. Louis to said Southeastern points defendant's apply a proportional rate which is 2¢ per hundred pounds greater than the rate to said Southeastern points from the Ohio River, if the hay is not unloaded at a warehouse in East St. Louis, regardless of whether or not the hay is shipped locally
496 to East St. Louis or through billed from the point of origin to the points of final destination, and regardless of provisions in their tariffs concerning through billing; but if the hay is unloaded at a warehouse in East St. Louis, defendant's exact for the transportation thereof from East St. Louis to said Southeastern points a rate of 4¢ per hundred pounds greater than the rate from the Ohio River to said Southeastern points:

And in further finding that the said finding of fact by the said Interstate Commerce Commission, as set forth above, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact by this Court, and in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues in this case; because the Interstate Commerce Commission did not in its Report and Opinion find said facts in substance; because there was no evidence introduced on the trial of this cause to support the same.

Fifty-first.

That said Circuit Court of Appeals erred because it failed to adjudge and decree that said Circuit Court erred in finding in its third special finding of fact that on the hearing of this cause before the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

Complainant operates two warehouses at East St. Louis, and most of the hay it handles it purchases on the track at East St. Louis, unloads, inspects, assorts and reloads at said warehouses, and sells at said Southeastern points, in competition with other hay dealers who do not unload the hay at East St. Louis. In such competition the complainant is therefore prejudiced to the extent of
497 2¢ per hundred pounds by defendant's method of applying rates of transportation as aforesaid. Defendants claim this 2¢ difference in rates is justified by difference in cost to them between the two kinds of transportation services they are called upon to per-

form; and in further finding that the said finding of fact by the said Interstate Commerce Commission as above set forth is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court, and in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues involved in this cause; because the Interstate Commerce Commission did not in its Report and Opinion find said facts in substance because there was no evidence introduced on the trial of this case to support the same.

Fifty-second.

That said Circuit Court of Appeals erred because it failed to adjudge and decree that said Circuit Court erred in finding in its fourth special finding of fact that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

At East St. Louis transfers of loaded cars from the northern to the Southern lines and transfers of empty cars from the southern to the northern lines are generally made by a connecting railroad Company, and the charge made by that Company for such service is $4.00 per car when the hay is unloaded as aforesaid, but only $2.00 per car when the hay is not so unloaded, and in each instance this charge is paid by the carrier which hauls the hay south from East St.
498 Louis: and in further finding that the said finding of fact by the said Interstate Commerce Commission as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact by this Court, and in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not in its Report and Opinion find said facts in substance; because there was no evidence introduced on the trial of this cause to support the same.

Fifty-fourth.

That said Circuit Court of Appeals erred because it failed to adjudge and decree that said Circuit Court erred in finding in its fifth special finding of fact that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

When the hay is unloaded as aforesaid an empty car must be furnished for the shipment by the carrier which hauls the hay south from East St. Louis, and the service of so furnising is fairly worth from 40 to 60 cents per car; and in further finding that the said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court, and in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues involved in this cause: because the Interstate Com-
499 merce Commission did not, in its Report and Opinion, find said facts in substance; because there was no evidence introduced on the trial of this cause to support the same.

Fifty-fifth.

That said Circuit Court of Appeals erred because it failed to adjudge and decree that said Circuit Court erred in finding in its sixth special finding of fact that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

The car is in use from 2 to 3 days longer than when the hay is unloaded as aforesaid than when it is not so unloaded, and a fair compensation for such use is 20 cents per day; and in further finding that the said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court, and in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not in its Report and Opinion find said facts in substance, because there is no evidence introduced on the trial of this cause to support the same.

500 Fifty-sixth.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in finding in its seventh special finding of fact that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

When hay is unloaded and reloaded at warehouses as aforesaid the time consumed in doing the work averages from 6 to 8 hours, but the expense of such hauling and reloading is borne entirely by the shipper:

and in further finding that the said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court, and in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not, in its Report and Opinion, find said facts in substance; because there is no evidence introduced on the trial of this cause, to support the same.

Fifty-seventh.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in finding in its eighth special finding of fact that, on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and opinion in substance the following facts:

Shipments of hay to which the rate of 2c. per hundred pounds above the rate from the Ohio River is applied as aforesaid and which are not unloaded at East St. Louis warehouses, are frequently
501 transferred from one car to another in the railroad yards at East St. Louis either because cars in which the hay is shipped

to East St. Louis from the north are out of repair, or because the northern lines are not willing to allow their cars to go south from East St. Louis. The expense of such transfer is from $1.25 to $1.50 per car, and this expense is entirely borne by the carrier which hauls the hay south from East St. Louis:

and in further finding that the said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence and in ordering that the said finding of fact be adopted as a special finding of fact by this Court, and in ordering that the same be set out in the records of this Court, because the said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not, in its Report and Opinion, find said facts in substance; because there was no evidence introduced on the trial of this cause, to support the same.

Fifty-eighth.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in finding in its ninth special finding of fact that, on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

The transfer charge of $4.00 per car above mentioned was formerly $3.00 per car, and the transfer charge of $2.00 per day above mentioned was formerly $1.50 per car: and in further finding that said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court, and in ordering that the same be set out in the record of this Court, because said finding of fact is not ma-
502 terial to the issues involved in this case because the Interstate Commerce Commission did not, in its Report and Opinion, find said facts in substance because there was no evidence introduced on the trial of this cause, to support the same.

Fifty-ninth.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in finding in its tenth special finding of fact that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

The weight of hay in cars shipped as aforesaid from East St. Louis to Southeastern points is from 1,000 to 2,000 pounds greater when the hay is reloaded at East St. Louis warehouses than when it is not so reloaded. This is an advantage in favor of the reconsigned hay:

and in further finding that the said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court and in ordering that the same be set out in the records of this Court, because

said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not, in its Report and Opinion find said facts in substance; because there was no evidence introduced on the trial of this cause, to support the same.

Sixtieth.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in finding in its eleventh special finding of fact that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

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Cars from the north, after being unloaded at warehouses as aforesaid, are frequently reloaded for the south, thus avoiding expense to the southern line of placing an empty car and subtracting perhaps a day from the additional time of the car service:

and in further finding that the said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court, and in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not in its Report and Opinion find said facts in substance; because there was no evidence introduced on the trial of this cause, to support the same.

Sixty-first.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in finding in its twelfth special finding of fact that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

That, taking everything into account, the average additional expense to southern lines in case of reconsigned hay will not exceed that of direct through shipments by more than from $2.00 to $2.50 per car, which is equivalent on the average loading of hay to about one cent per 100 pounds:

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and in further finding that the said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court, and in ordering that the same be set out in the record of this Court, because said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not, in its Report and Opinion find said facts in substance; because there was no evidence introduced on the trial of this cause, to support the same.

Sixty-second.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in finding in its thirteenth spe-

cial finding of fact that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts;

Much of the hay which actually passes through East St. Louis might reach its southern destination via other gateways. Hay grown in different sections also competes via these other gateways in the south with that which does or might pass through East St. Louis. These gateways are Cincinnati, Louisville, Evansville, Cairo, Memphis, Nashville and perhaps others. The testimony showed that at all these points hay could be stopped off, unloaded and treated as the complainant handles its hay at East St. Louis, without the imposition of any charge in addition to the through rate. The testimony showed that these markets all competed with East St. Louis, but the force of that competition did not appear:

and in further finding that the said finding of fact by the Interstate Commerce Commission, as above set forth, is supported and
505 justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court, and in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues in this cause; because the Interstate Commerce Commission did not in its Report and Opinion find said facts in substance; because there was no evidence introduced on the trial of this cause, to support same.

Sixty-third.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in finding in its foruteenth special finding of fact that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

The complainant actually paid to the Southern Railway Company, on reconsigned shipments of hay, at the rate of 2c. per hundred pounds, the difference between the reconsigning rate and the rate on hay not reconsigned, the sum of $3,144.17:

And in further finding that the said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court, and in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not, in its Report and Opinion find said facts in substance, and because there was no evidence introduced on the trial of this cause, to support the same.

Sixty-fourth.

That said Circuit Court of Appeals erred because it failed
506 to adjudge that said Circuit Court erred in rendering judgment in favor of petitioner, St. Louis Hay & Grain Company against Southern Railway Company in the sum of One Thou-

sand Six Hundred Fifty Nine Dollars and Forty One Cents ($1659.41) and costs and attorneys' fee and in ordering that execution issue against Southern Railway Company for the amount of the said judgment and costs.

Sixty-fifth.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in allowing the St. Louis Hay & Grain Company an attorney fee herein in the sum of Three Hundred Fifty Dollars ($350.00), to be collected as part of the costs in this case, because;

1st. The said order and decision of the Court in allowing said attorney fee and ordering that the same be collected as part of the costs in this case is contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States, in this, that it denies to Southern Railway Company, the equal protection of the law.

2nd. It abridges the privileges and immunities of Southern Railway Company being a citizen of the United States.

3rd. The provisions of the Act of Congress to regulate commerce which allows an attorney fee to the petitioner in a proceeding of this character is contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States, and is unconstitutional and void.

Sixy-sixth.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court made findings and entered a judgment contrary to the evidence in the case.

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Sixty-seventh.

That said Circuit Court of Appeals erred because it failed to adjudge that the judgment and findings of the said Circuit Court were contrary to the law in this case.

Sixty-eighth.

That said Circuit Court of Appeals erred because it failed to adjudge that the judgment and findings of said Circuit Court were contrary to law and the evidence in the case.

Sixty-ninth.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in entering judgment in this case in favor of St. Louis Hay & Grain Company and against Southern Railway Company.

Seventieth.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in entering judgment on the

general findings of fact in favor of the St. Louis Hay & Grain Company and against Southern Railway Company.

Seventy-first.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in entering judgment on the special findings of fact in favor of St. Louis Hay & Grain Company and against Southern Railway Company.

Seventy-second.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in not finding the issue
508 for the Southern Railway Company and in not entering a judgment in favor of Southern Railway Company and against St. Louis Hay & Grain Company.

Seventy-third.

That said Circuit Court of Appeals erred in ruling that parties have no right to request a Federal Court in trying a law case without a jury to find material facts.

Seventy-fourth.

That said Circuit Court of Appeals erred in ruling that parties have no right in a law case submitted to a Judge without a jury, to request the Court to rule on and be governed by certain propositions of law submitted to the Court.

Seventy-fifth.

That said Circuit Court of Appeals erred in holding that "the exaction is in violation of section 1 as being excessive and thereby produces unjust discrimination and undue disadvantages in violation of sections 2 and 3" the error in this being that the Circuit Court of Appeals adjudges that a violation of Section 1 of the Act to Regulate Commerce constitutes in and of itself a violation of sections 2 and 3 of the Act to Regulate Commerce; in other words that unjust discrimination denounced by section 2 of the Commerce Act and unreasonable preference or advantage denounced by section 3 of the act are one and the same thing as unreasonable rates denounced by section 1 of the act.

Seventy-Sixth.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in not holding that the trial before it was *de novo*, and that the issue of the reasonableness
509 of the rates involved made in the pleadings before the said Circuit Court was a material issue to be passed on in the first instance by the Interstate Commerce Commission, and thereafter by the Circuit Court, and that it was error for this issue of reasonableness to be ignored by both the Commission and the Circuit Court and not to be passed upon by either the Commission or the Circuit Court.

Wherefore, Southern Railway Company prays that the said judgment of the United States Circuit Court of Appeals for the Seventh Circuit may be reversed.

CLAUDIAN B. NORTHROP,
EDWARD C. KRAMER,
Attorneys for Plaintiff in Error.

May fourth, 1907.

Endorsed: Filed May 14, 1907. Edward M. Holloway, Clerk.

510 And afterwards, on the same day, to-wit: One the fourteenth day of May, 1907, in the October term last aforesaid, there was filed in the office of the clerk of this court the order allowing a writ of error, which order is in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit.

No. —.

SOUTHERN RAILWAY COMPANY, Plaintiff in Error,
vs.
ST. LOUIS HAY & GRAIN COMPANY.

Order Allowing Writ of Error.

On this Fourth day of May, A. D. 1907, came the plaintiff in error, by his attorneys, and presented its petition praying for the allowance of a writ of error intended to be urged by it, praying also that a transcript of the records and proceedings and papers of said cause duly authenticated may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may be proper in the premises.

In consideration whereof said writ of error is allowed, upon said plaintiff in error giving bond according to law in the sum of twenty-five hundred dollars ($2500.00) dollars which shall operate as a supersedeas in this case.

And it is further ordered that said petition be, and the same is hereby, allowed and granted and that the writ of error be, and is hereby, allowed *and granted and that the writ of error be, and is hereby allowed* in said cause returnable before the United States Supreme Court on the second day of June, A. D. 1907, and
511 that the clerk of the Supreme Court of the United States sign and seal the writ, and that a transcript of the records and of all proceedings and papers in said cause shall be made and transmitted to the United States Supreme Court.

It is further ordered that the bond in the sum of twenty-five hundred dollars tendered by said plaintiff in error be, and the same is, hereby approved as the bond on a writ of error herein.

WILLIAM R. DAY,
Associate Justice of the Supreme Court of the United States.

May fourth, 1907.

Endorsed: Filed May 14, 1907. Edward M. Holloway, Clerk.

And afterwards, on the same day, to-wit: On the fourteenth day of May, 1907, in the October term last aforesaid, there was filed in the office of the clerk of this court the bond on writ of error, which bond is in the words and figures following, to-wit:

Know all men by these presents, That we, Southern Railway Company, as principal, and The United States Fidelity & Guaranty Company, a corporation of Maryland, as sureties, are held and firml bound unto St. Louis Hay and Grain Company in the full and just sum of Two thousand five hundred (2500.00) dollars to be paid the said St. Louis Hay and Grain Company, its successors or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severall by these presents. Sealed with our seals and dated this fourth
512 day of May, in the year of our Lord one thousand nine hundred and seven.

Whereas, lately at a United States Circuit Court of Appeals for the Seventh Circuit in a suit depending in said Court between Southern Railway Company, Plaintiff in Error, and St. Louis Hay and Grain Company, Defendant in Error, a judgment was rendered against the said Southern Railway Company and the said Southern Railway Company having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit and a citation directed to the said St. Louis Hay and Grain Company citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now the condition of the above obligation is such, That if the said Southern Railway Company shall prosecute said writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void else to remain in full force and virtue.

SOUTHERN RAILWAY COMPANY, [SEAL.]
By J. M. CULP, *Vice-President.* [SEAL.]
THE UNITED STATES FIDELITY & GUARANTY CO., [SEAL.]
[SEAL.] By RICHARD D. LANG, *Vice-President.* [SEAL.]
ALBERT H. BUCK, *Asst. Sec'y.*

Sealed and delivered in presence of

J. L. EDWARDS,
RALPH S. MURPHY,
Witnesses to Seal — Signature of Southern Railway Company.

Approved by

WILLIAM R. DAY,
Associate Justice of the Supreme Court of the United States.

Endorsed: Filed May 14, 1907. Edward M. Holloway, Clerk.

Form of Justification by Corporate Surety.

We Will Bond Your.

(Cut.)

513 STATE OF MARYLAND, *City of Baltimore, ss:*

Personally appeared before me Richard D. Lang, on this fourth day of May, one thousand nine hundred and seven, known to me to be the Vice President of The United States Fidelity and Guaranty Company, the corporation described in and which executed the annexed bond of Southern Railway Company as surety thereon, and who, being by me duly sworn, deposes and says that he resides at Baltimore, in the State of Maryland; that he is the Vice President of said The United States Fidelity and Guaranty Company, and knows the corporate seal thereof; that said Company is duly and legally incorporated under the laws of the State of Maryland; that said company has complied with the provisions of the Act of Congress of August 13, 1894, allowing certain corporations to be accepted as surety on bonds; that the seal affixed to the annexed bond of Southern Railway Company is the corporate seal of said The United States Fidelity and Guaranty Company, and was thereto affixed by order and authority of the Board of Directors of said company; that he signed his name thereto by like order and authority as Vice President of said company; and that he is acquainted with Albert H. Buck and knows him to be the Asst. Secretary of said Company and that the signature of said Albert H. Buck, subscribed to said bond is in the genuine handwriting of said Albert H. Buck and was thereto subscribed by order and authority of said Board of Directors and in the presence of said deponent; and that the assets of said company, unincumbered and liable to execution, exceed its claims, debts and liabilities of every nature whatsoever, by more than the sum of One Million Five Hundred Thousand ($1,500,00-.00) Dollars.

Deponent further says that J. S. Swormstedt, residing at
514 Washington. in the District of Columbia, has been duly appointed as the agent of said company to accept services of process against said company in the judicial district of Columbia, and is authorized to enter an appearance in behalf of said company in any action, suit or proceeding brought against it in said judicial district.

RICHARD D. LANG,
Vice-President.

Sworn to, acknowledged before me, and subscribed in my presence this fourth day of May 1907.

[SEAL.]

A. D. PATRICK,
Notary Public.

Endorsed: Filed May 14, 1907. Edward M. Holloway, Clerk.

And afterwards, on the same day, to-wit: On the fourteenth day of May, 1907, in the October term last aforesaid, there was filed in the office of the clerk of this court a copy of the writ of error, which copy of the writ of error is in the words and figures following, to-wit:

515 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the United States Circuit Court of Appeals for the Seventh Circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court of Appeals before you, or some of you, between Southern Railway Company, Plaintiff in Error, and St. Louis Hay and Grain Company, Defendant in Error, a manifest error hath happened, to the great damage of the said Southern Railway Company, as by its complain- appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington on June second, 1907, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the sixth day of May, in the year of our Lord
516 one thousand nine hundred and seven.

[SEAL.] (Signed) JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by

(Signed) WILLIAM R. DAY,
Associate Justice of the Supreme Court of the United States.

Endorsed: No. 1329. Southern Railway Co. *vs.* St. Louis Hay & Grain Co. Copy of Writ of Error deposited with the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit for the benefit of the defendant in error, St. Louis Hay & Grain Co. Filed May 14, 1907. Edward M. Holloway, Clerk.

And afterwards, on the same day, to-wit: the fourteenth day of May, 1907, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

TUESDAY, *May* 14, 1907.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present: Hon. Peter S. Grosscup, Circuit Judge presiding. Hon. Francis E. Baker, Circuit Judge. Hon. William H. Seaman, Circuit Judge. Edward M. Holloway, Clerk. Luman T. Hoy, Marshal.

517 1329.

SOUTHERN RAILWAY COMPANY
vs.
ST. LOUIS HAY & GRAIN COMPANY.

Error to the Circuit Court of the United States for the Eastern District of Illinois.

Now this day comes the Plaintiff-in-Error by its counsel, and presents its petition for writ of error, assignment of errors, bond and an order allowing a writ of error signed by Honorable William R. Day, Associate Justice of the Supreme Court of the United States, and dated May 4, 1907, which order is in the words and figures following, to-wit:

"On this fourth day of May, A. D. 1907, came plaintiff in error, by its attorneys, and presented its petition praying for the allowance of a writ of error intended to be urged by it, praying also that a transcript of the records and proceedings and papers of said cause duly authenticated may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may be proper in the premises.

"In consideration whereof said writ of error is allowed, upon said plaintiff in error giving bond according to law in the sum of Twenty five hundred Dollars (2500.00) dollars which shall operate as a supersedeas in this case.

"And it is further ordered that said petition be, and the same is hereby, allowed and granted and that the writ of error be, and is hereby, allowed in said cause returnable before the United States Supreme Court on the Second day of June, A. D. 1907, and that the Clerk of the Supreme Court of the United States sign and seal the writ, and that a transcript of the records and all proceedings and papers in said cause shall be made and transmitted to the United States Supreme Court.

"It is further ordered that the bond in the sum of Twenty
518 five hundred dollars tendered by said plaintiff in error be, and the same is, hereby approved as the bond on a writ of error herein.

WILLIAM R. DAY,
Associate Justice of the Supreme Court of the United States.

May fourth, 1907."

And also present a citation issued by the Supreme Court of the United States on May 4, 1907, and a writ of error, and copy thereof, issued by said court on May 6, 1907.

519 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten and printed pages, numbered from 1 to 94, inclusive, contain a true copy of the papers filed (except briefs of counsel) and proceedings had thereon in the United States Circuit Court of Appeals for the Seventh Circuit, in the case of Southern Railway Company *vs.* St. Louis Hay and Grain Company, No. 1329, October Term, 1906, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this twenty-fourth day of May A. D. 1907.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

520 UNITED STATES OF AMERICA, *ss:*

To St. Louis Hay and Grain Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, June Second, 1907, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the United States Circuit Court of Appeals for the Seventh Circuit wherein Southern Railway Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William R. Day, Associate Justice of the Supreme Court of the United States, this fourth day of May, in the year of our Lord one thousand nine hundred and seven.

WILLIAM R. DAY,
Associate Justice of the Supreme Court of the United States.

521 [Endorsed:] No. 1329. Filed May 14, 1907. Edward M. Holloway, Clerk.

Service of within citation, by copy, admitted this 6th day of May 1907.

P. J. FARRELL,
Att'y for St. Louis Hay & Grain Company.

Service of within citation by copy admitted this 13th day of May, 1907.

FORMAN & WHITSEL,
Att'ys for St. Louis Hay & Grain Co.

Endorsed on cover: File No. 20,755. U. S. circuit court of appeals, 7th circuit. Term No. 104. Southern Railway Company, plaintiff in error, *vs.* St. Louis Hay and Grain Company. Filed June 6, 1907. File No. 20,755.

Office Supreme Court, U. S.
FILED.
JAN 18 1909
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1908.

SOUTHERN RAILWAY COMPANY, *Plaintiff in Error.*
vs.
ST. LOUIS HAY & GRAIN COMPANY. *Defendant in Error.*
} No. 104.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR PLAINTIFF IN ERROR.

EDWARD C. KRAMER,
CLAUDIAN B. NORTHROP,
Counsel for Southern Railway Company, Plaintiff in Error.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1908.

SOUTHERN RAILWAY COMPANY,
Plaintiff in Error.
vs.
ST. LOUIS HAY & GRAIN COMPANY.
Defendant in Error.
No. 104.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR PLAINTIFF IN ERROR.

Statement of Case.

The defendant in error, on the 27th day of May, 1904, filed a petition before the Interstate Commerce Commission against Southern Railway Company, plaintiff in error, and other railway companies, in which it alleged:

1st. That it is a corporation of the State of Missouri with its principal place of business located in the City of St. Louis, and engaged in the purchase, shipment and sale of hay.

2d. That the plaintiff in error, Southern Railway Company, is a common carrier engaged in the transportation of property by railroad betwen East St. Louis and "Southeastern points," and is subject to the Act of Congress to regulate Interstate Commerce.

3d. That the plaintiff in error maintains schedules of rates by which it charges for the transportation of hay in car load lots from East St. Louis to "Southeastern points" two cents per hundred pounds in addition to the regular established rates for transporting hay in car load lots from Cairo, Illinois, to said "Southeastern points" when the shipments originate at points on railroads other than those of its own and are not reconsigned at East St. Louis, and four cents per hundred pounds in addition to such established rates when the shipments are reconsigned at East St. Louis. That is, for the privilege of reconsigning at East St. Louis, two cents per hundred pounds is charged.

4th. That it made a number of shipments from East St. Louis to said "Southeastern points" that were reconsigned at East St. Louis and paid thereon freight at the rate of four cents per hundred pounds in addition to the established rates from Cairo to said "Southeastern points," while the plaintiff in error at the same time transported car loads of hay not reconsigned at East St. Louis, but originating at the same points and destined to the same points, for two cents per hundred pounds in addition to the established rates from Cairo to said "Southeastern points."

5th. That the cost to the plaintiff in error for transporting the shipments from East St. Louis to said "Southeastern points" is the same whether or not the shipments are reconsigned at East St. Louis or not; that the charge complained of is unreasonable, and that it was subjected to the payment of unjust and unreasonable rates and to undue and unreasonable prejudice and disadvantage, and that the

plaintiff in error was giving to other shippers undue and unreasonable preference in violation of the Sections 1, 2 and 3 of the Act to Regulate Commerce.

Page 4 of Transcript of Record.

The plaintiff in error answered this charge denying the unjust discrimination and that the reconsigning rate was unreasonable and unjust.

Page 25 of Transcript of Record.

The Commission heard the evidence in the case, and on May 15, 1905, rendered a decision in which it purported to find that the plaintiff in error received two cents per hundred pounds for hauling hay from East St. Louis to Ohio River points, originating at points beyond East St. Louis, and destined to "Southeastern points," and that it had charged the defendant in error four cents per hundred pounds for hauling hay from East St. Louis to Ohio River points destined to "Southeastern points," which was reconsigned at East St. Louis; that there was a difference in the service of about one cent per hundred pounds, and that the plaintiff in error had discriminated against the defendant in error to the extent of one cent per hundred pounds in the reconsigned shipments made, and found that the amount in which the plaintiff in error had so discriminated against the defendant in error aggregated the sum of $1,572.08, which it ordered the plaintiff in error to pay to the defendant in error.

Page 6 of Transcript of Record.

The defendant in error filed a Petition in the Circuit Court of the United States for the Eastern District of Illinois, on the 23d day of January, 1906, to enforce the Order of the Commission, as provided in Section 13, of the Inter-

state Commerce Act, which Petition in substance, alleges as follows:

1st. That the defendant in error is a corporation of the State of Illinois, having its principal office and place of business at East St. Louis, Illinois, and that it is engaged in the transportation of hay from East St. Louis, to points in other States of the United States over the railway of plaintiff in error.

2d. That the plaintiff in error is a corporation of the State of Virginia, having its principal office and place of business at Richmond in said State, and that as such railway it is engaged as a common carrier in Interstate Commerce; That from June 1, 1903, to the time of the commencement of this suit, the plaintiff in error was possessed of, using and operating a railroad from East St. Louis through the eastern district of Illinois to points in other States of the United States, to which the defendant in error is engaged in shipping hay from East St. Louis, over plaintiff in error's railroad and that during all of the said time, the plaintiff in error was and is subject to the provisions of the Interstate Commerce Act.

3d. That the plaintiff in error from June 1st, to the time of the commencement of this suit, has maintained an office at East St. Louis, and employed agents there for the purpose of making contracts for carrying freight, and collecting the charges therefor, and that the plaintiff in error committed the acts complained of at East St. Louis.

4th. That under Section 13 of the Interstate Commerce Act, the defendant in error on June 8, 1904, filed with the Interstate Commerce Commission a petition against plaintiff in error, and other railroads therein named, asking for reparation on account of damages sustained by the defendant in error in consequence of alleged violation of the Interstate Commerce law, which said petition is attached to the Peti-

tion, marked Exhibit "A" and made a part of the same, and is found printed in full on page 6 of the transcript of record.

5th. That thereupon the Interstate Commerce Commission complied with Section 13 of the Interstate Commerce law by giving notice to the plaintiff in error, and the other defendants in said suit, all of whom appeared and answered defendant in error's petition; That the cause being at issue the Commission heard the testimony on behalf of the respective parties, and found that the plaintiff in error and the other defendants therein named, had violated the provisions of the Interstate Commerce law in certain respects as alleged in said petition, Exhibit "A," and that the defendant in error had suffered damages, for which it is entitled to reparation, and that on May 15, 1905, the Commission made a report in writing, setting forth their conclusions and findings of fact. A copy of said report was marked Exhibit "B" and attached to said petition and made a part thereof, and may be found in full on pages 9 to 21, inclusive, of the Transcript of Record.

6th. That on the 15th day of May, 1905, the Commission entered an Order that the plaintiff in error pay to the defendant in error as reparation for excessive charges on hay in car load lots reconsigned from East St. Louis to "Southeastern points" between June 1, 1903, and February 1, 1905, the sum of $1,572.08. A copy of said Order is marked Exhibit "C" and attached to defendant in error's petition, and made a part thereof, and may be found in full on page 21 of the transcript of record.

7th. That on May 15, 1905, the plaintiff in error was duly served with a copy of said report, Exhibit "B," and of said Order or notice, Exhibit "C."

8th. That the plaintiff in error has failed and neglected to comply with the order of the Interstate Commerce Com-

mission, whereupon the defendant in error prays the Court to fix a time and place of trial, to hear, determine and adjudicate the matters therein set forth, and to order the plaintiff in error to pay the defendant in error Attorney's fee, and to make such other orders as may to the Court seem proper.

Page 2 of Transcript of Record.

Pursuant to the Statute, summons issued out of the Clerk's office of the United States Circuit Court for the Eastern District of Illinois, was served upon the plaintiff in error on January 29, 1906, together with an Order of the Court that the case be tried at Danville in said District, on the 5th day of March, 1906. Afterwards, on February 6, 1906, it was agred between the parties that the case be tried at East St. Louis, and that the plaintiff in error be given until the 15th day of March, 1906, to answer the petition of the defendant in error. This time was afterwards extended until the 20th day of March, 1906.

On the 19th day of March, 1906, plaintiff in error filed its answer duly verified by affidavit of Thomas C. Powell, its 5th Vice-President, which is, in substance, as follows:

1st. Plaintiff in error states that it has no knowledge or information concerning the matters and things set forth in paragraph 1 of defendant in error's petition.

2d. Plaintiff in error admits the allegations of paragraph 2 of defendant in error's petition.

3d. Plaintiff in error admits all of paragraph 3 of said petition except that part of said paragraph which alleges that it committed, at East St. Louis or elsewhere, the acts complained of and referred to in the Exhibits attached to said petition, which allegations it denies.

4th. Plaintiff in error admits the allegations of paragraph 4 of said petition.

5th. Plaintiff in error admits that it was served with a

copy of the petition filed with the Interstate Commerce Commission; that it filed an answer to said petition, denying the allegations as to violation of the Interstate Commerce Act. It admits that the Interstate Commerce Commission took testimony and investigated the said complaint and thereafter issued a document entitled "Report and Opinion of the Commission," a copy of which the defendant in error has marked Exhibit "B" and attached to its petition in this cause. Plaintiff in error avers that regardless of said report and opinion holding that it has violated the Interstate Commerce law, it denies that it has, in any manner whatever, violated any of the provisions of said Act, and particularly denies that it has violated any of the provisions of the said Act in the respects set forth in the report and opinion of said Commission. Plaintiff in error further denies that the Interstate Commerce Commission made any findings of fact in its report and opinion as required by law.

Plaintiff in error avers that the law requires the Commission to show in its opinion or report what the issues in the case are, and what facts it finds with regard to such issues, with suitable reference to the evidence produced with regard to particular questions, all of which the Commission failed to do. Plaintiff in error avers that the Commission entirely ignored the principal and most important issue presented to it by the pleadings and evidence in the case before it. It alleges that the defendant in error, and all shippers of hay at East St. Louis were charged practically one cent less from East St. Louis to "Southeastern points" than the local rate from East St. Louis to "Southeastern points" upon shipments of hay reconsigned at East St. Louis. The reconsigning rate is one cent less than the local rate and that the reconsigning rate is a proportional rate made by the plaintiff in error for the purpose of facilitating the movement of hay originating at points beyond

East St. Louis which had already borne a transportation charge to East St. Louis, and had stopped at East St. Louis for the purpose of re-weighing, regrading, etc., and is made in the highest interests of trade and commerce; that the effect of the findings of the Commission is to compare a portion of a through rate with a local rate, which is in contravention of law; that this issue was presented to the Commission and was entirely ignored by it.

Plaintiff in error avers that the Commission ignored said issue and based its decision wholly upon the question as to whether or not the additional cost and expenses incident to reconsigning hay at East St. Louis amounts to more than two cents per hundred pounds, and on this issue the Commission failed, as required by law, to set forth in its report and opinion reference to evidence adduced in regard to this question.

Plaintiff in error avers that the greater preponderence of the evidence before the Commission proves conclusively that the extra cost of reconsigning hay at East St. Louis amounts to more than two cents per hundred pounds.

Plaintiff in error further avers that the Commission itself finds that the car is in use two or three days longer in a case of reconsigned car loads than in the case of other shipments, and further finds that the carriers have agreed on 20 cents per day as a per diem charge for cars, and that it is the opinion of the Commission that 20 cents per day is enough, whereupon the Commission made an allowance of 60 cents for three days for the use of a car.

Plaintiff in error avers that in the 16th annual report of the Commission, dated December 15, 1902, on page 80, the Commission stated that 20 cents per day was "ridiculously low" for the use of a car, and plaintiff in error avers that nothing has occurred since said date to change the said "ridiculously low" charge into a sufficient or reasonable re-

muneration. Plaintiff in error further avers that the per diem charge of 20 cents per day has never been agreed upon with any idea of remuneration, but solely for the purpose of expediting the return of equipment to railway companies owning the same, in the interest of the public and commerce, and that when a car has remained on the rails of a line not owning the same for more than thirty days, the charge of $1.00 per day is made; that these rules have been made for the benefit of commerce and have no relation to revenue or remuneration, but are merely an incentive to return cars promptly; that all of these facts were known to the Commission and that it was unfair to use the said per diem charge of 20 cents per day in connection with revenue or remuneration in any manner whatever.

The plaintiff in error further avers that the Commission erred in basing its opinion upon the theory that the plaintiff in error was not entitled to a reasonable profit upon the services performed by it in reconsigning hay at East St. Louis, and alleges that the Commission has no power to permit the use of plaintiff in error's property or to compel it to furnish its services at actual cost and without any profit at all, and that said report and opinion deprives the plaintiff in error of its property without due process of law, contrary to the 14th Amendment to the Constitution of the United States. Plaintiff in error, answering paragraphs 6, 7 and 8 of defendant in error's petition, admits the allegations therein contained and says that it has not complied with the Order of the Commission because the same is unlawful. Said answer will be found on pages 20 to 25, inclusive, of the transcript of record.

The defendant in error filed a general replication to plaintiff in error's answer, and the case was set for trial at the May term, 1906, of the United States Circuit Court for the Eastern District of Illinois, at East St. Louis, Illinois. By stipulation of the parties, a jury was waived and the case was tried by the court without the intervention of a jury.

The defendant in error to maintain its issues in the case introduced in evidence its petition filed before the Interstate Commerce Commission, and the report and opinion of the Commission rendered in this case. To the introduction of this report and opinion, the plaintiff in error duly objected. The said Circuit Court overruled said objection, to which action of the said Circuit Court exception was duly taken.

The plaintiff in error in the introduction of its evidence for the sake of illustration, used Atlanta, Georgia, as a representative point in southeastern territory to which hay is shipped, and used Bowen, Illinois, as a representative point where hay originates beyond East St. Louis and is shipped through East St. Louis to southeastern territory.

Plaintiff in error to maintain its issues in this case introduced evidence conclusively establishing the following:

1st. That the rates on hay, during the time in question, from Ohio River points, viz.: Cincinnati, Louisville, Evansville and Cairo to Atlanta was 24 cents per hundred pounds.

2d. That the plaintiff in error, during said time, maintained a local rate on hay from East St. Louis to southeastern territory of five cents per hundred poinds above the rate from Ohio River points to southeastern territory, for example, a rate of 29 cents per hundred pounds from East St. Louis to Atlanta.

3d. That during said time, it maintained a reconsigning rate from East St. Louis to southeastern territory of four cents per hundred pounds above the rate from Ohio River points to southeastern territory, for example—a rate of 28 cents per hundred pounds from East St. Louis to Atlanta. That the reconsigning rate was applied in all cases where shippers at East St. Louis presented evidence to plaintiff in error that they had hay in their possession at East St. Louis which had already borne a transportation charge from points

beyond East St. Louis to East St. Louis. This evidence was furnished by the presentation of a paid expense bill showing that the shipper had paid the freight on a car load of hay into East St. Louis and in the entire transaction plaintiff in error dealt wholly with the shipper and not with any other carrier.

4th. That during the time in question, it accepted as its portion on through shipments from other carriers on hay originating beyond East St. Louis and shipped through East St. Louis to southeastern territory, a rate of two cents per hundred pounds above the rate from Ohio River points to southeastern territory—for example—a rate of 26 cents per hundred from East St. Louis to Atlanta: That in such transaction, it dealt wholly with the connecting carrier and had no transaction whatever with the shipper.

5th. That the rates from Ohio River points to southeastern territory are conceded by the defendant in error to be reasonable.

6th. That the reconsigning rate from East St. Louis to southeastern territory of four cents per hundred pounds above the rate from Ohio River points to southeastern territory is the result of open competition and is reasonable and just.

7th. That the rate of two cents per hundred pounds above the rate from Ohio River points to southeastern territory is a portion of a through rate received by the plaintiff in error from other carriers for its part of a through haul on hay originating beyond East St. Louis and shipped over the lines of other carriers through East St. Louis, to Southeastern territory.

8th. That if the reconsigning rate from East St. Louis to southeastern territory can be compared with the portion of the through rate received by the plaintiff in error for its part of the through haul from East St. Louis to southeast-

ern territory, on shipments originating beyond East St. Louis and shipped through East St. Louis to southeastern territory, the difference in the cost of services rendered by plaintiff in error amounts to more than two cents per hundred pounds.

The defendant in error on the cross-examination of plaintiff in error's witnesses was permitted to interrogate them as to reconsigning practices without cost at Ohio and Mississippi River points, such as Memphis and Louisville, during the time in question, over the objections of the plaintiff in error, and in rebuttal, defendant in error was permited to introduce evidence showing that reconsigning on shipments of hay was permitted without extra cost during the time in question, at Ohio and Mississippi River points, such as Memphis and Louisville, and again at the close of all the evidence, the plaintiff in error moved the said Circuit Court to exclude all the evidence bearing upon this question from the consideration of this case.

Page 186 of Transcript of Record.

At the close of all the evidence, plaintiff in error moved the said Circuit Court to exclude from consideration in this case the report and opinion of the Interstate Commerce Commission, because the said report and opinion did not contain matters and was not prepared and rendered as required by law.

Page 186 of Transcript of Record.

At the close of all the evidence the plaintiff in error moved the said Circuit Court to remand the case to the Interstate Commerce Commission because the issues presented to said Commission were not passed upon and determined by it, and because the plaintiff in error is entitled, under the law, to have the Commission pass upon and deter-

mine all material issues presented to it before the report and opinion of the Commisison may make a prima facie case, and because the report and opinion of the Commission was not prepared and rendered as required by law.

Page 188 of Transcript of Record.

At the close of all the evidence the plaintiff in error moved the said Circuit Court to find the issues in its favor and to render judgment against the defendant in error.

Page 190 of Transcript of Record.

All of these motions were overruled by the said Circuit Court and due exceptions taken.

At the close of all the evidence, the plaintiff in error presented to the said Circuit Court separate requests for 21 findings of fact.

Pages 191-196, inclusive, of Transcript of Record.

The said Circuit Court refused to find those special findings of fact and substituted 14 special findings of its own, which may be found on pages 213 to 215, inclusive, of the Transcript of Record.

Plaintiff in error duly objected to this refusal and substitution, which objection was overruled and exception taken.

At the close of all the evidence the plaintiff in error presented separately, and requested the said Circuit Court to hold as law, 19 propositions of law submitted by it.

Pages 205 to 212, inclusive, of the Transcript of Record.

The said Circuit Court held all of these propositions of law except the 4th, 6th, 7th, 9th, 18th and 19th, which it refused, and modified the 6th and 18th. Plaintiff in error

objected to this action of the said Circuit Court and duly excepted.

The said Circuit Court thereupon rendered judgment in favor of the defendant in error and against the plaintiff in error for the sum of $1,659.41, and allowed an attorney's *fee* of $350.00 to the defendant in error, to which action of the said Circuit Court exception was duly taken.

Pages 213 to 220, inclusive, of the Transcript of Record.

The plaintiff in error afterwards filed a motion to set aside the judgment of the said Circuit Court and to grant a new trial, which motion was overruled by the said Circuit Court and due exception taken.

Page 220 of Transcript of Record.

On August 20, 1906, a writ of error was sued out and allowed to the United States Circuit Court of Appeals for the Seventh Circuit.

Transcript of Record, 333-334.

At the October Term 1906, January Session 1907, the judgment of said Circuit Court was affirmed by the said Circuit Court of Appeals.

Transcript of Record, 343-349.

On May 6, 1907, a writ of error was sued out and allowed to the Supreme Court of the United States from said judgment of said Circuit Court of Appeals affirming said Judgment of said Circuit Court.

Transcript of Record, page 395.

Errors Relied Upon.

First.

That said Circuit Court of Appeals erred because it failed to adjudge that the Circuit Court of the United States for the Eastern District of Illinois was in error in rendering a decree in favor of St. Louis Hay and Grain Company, plaintiffs below, on or about the 25th day of June A. D. 1906.

Transcript of Record, p. 352.

Second.

That said Circuit Court of Appeals erred in not reversing said decree rendered in said cause, on or about June 25, 1906, by said Circuit Court of the United States for the Eastern District of Illinois.

Transcript of Record, p. 352.

Third.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in admitting in evidence the report and opinion of the Interstate Commerce Commission in the case of St. Louis Hay & Grain Company vs. Mobile & Ohio Railroad Company, Illinois Central Railroad Company, Louisville & Nashville Railroad Company and Southern Railway Company, decided May 15, 1905.

1. Because the Commission in said opinion did not pass upon the issues presented to it in said cause.

2. Because the issues in said case presented the question of the reasonableness and justness of the reconsigning rate complained of on hay from East St. Louis to Southeastern points which said issue was material and one of the principal issues in said cause, and was not passed upon and determined by said Interstate Commerce Commission.

3. Because said Report and Opinion of said Commisison does not find the facts involved in said matter before said Commission as required by Section 16 of the Act to Regulate Commerce.

4. Said Report and Opinion cannot be introduced as *prima facie* evidence of any matters involved before said Commission because the facts are not found by the Commission as required by the Act to Regulate Commerce.

5. Because said Report and Opinion fails to show what the issues in the case before the Interstate Commerce Commission were, and what facts the Commission found in regard to such issues and said Report and Opinion fails to make suitable reference to the evidence adduced before the Interstate Commerce Commission, in regard to any particular question where there was a conflict of evidence showing how the Commission settled any disputed fact; and because said Report and Opinion fails to state as a fact whether or not there was any undisputed evidence in reference to any of the facts.

6. Because said Report and Opinion of the Commission is wholly irrelevant to the issues made by the pleadings before this Court in this case and makes no reference whatever to the main and material issue in this cause, to wit: the reasonableness and justness of the reconsigning rate from East St. Louis to Southeastern points.

7. Because said Report and Opinion cannot be introduced as *prima facie* evidence of any matter involved in this suit.

Transcript of Record, pp. 352, 353.

FOURTH.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in admitting over the objection of Southern Railway Company, the fol-

lowing testimony of the witness T. C. Powell, on cross-examination by the St. Louis Hay & Grain Company.

Q. Have you any control whatever over this traffic at Louisville, so you can charge a man any more when he reconsigns it, when he unloads it, than you could if he simply had the car transported in there and afterwards transported to Atlanta? Could you make any distinction; do you make any distinction? Does the man who reconsigns at Louisville have to pay anything for it?

A. Yes, sir, because I have stated, the rate to Louisville proper is higher than 13 cents, in my opinion. If it is 16 cents, as it probably is, about 16, he pays about 33 cents on a reconsigned shipment. Then on shipments moving direct from Bowen through East St. Louis to Louisville and Atlanta, we have certain rules for reconsigning the car at Louisville, which are filed with the Commission, and which provided from certain Illinois territory a reconsigning rate of 22 cents at the time of this complaint; certain Indiana territory a rate of 24 cents, and from certain other territory a rate of 23 cents; and from certain Illinois territory there would be a rate of 23 cents. These are all covered by tariffs filed with the Interstate Commerce Commission. A reconsigned shipment at Louisville invariably pays, so far as we are concerned, the regular local rate into Louisville, whatever that may be.

Transcript of Record, p. 353.

FIFTH.

That the said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in admitting over the objection of Southern Railway Company the following testimony of the witness, T. C. Powell, on cross-examination by the St. Louis Hay & Grain Company:

Q. Then you are willing to state to this court that the man who reconsigns at Louisville is charged for that privilege the same way as the man who reconsigns at East St. Louis?

A. He is charged for the privilege, but not exactly the same way.

Transcript of Record, pp. 353, 354.

SIXTH.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in admitting over the objection of Southern Railway Company the following testimony of the witness T. C. Powell, on cross-examination by St. Louis Hay & Grain Company:

Q. Explain just what is done?

A. At East St. Louis we fix the reconsigning rate at 28 cents from East St. Louis to Atlanta. In order to get that rate he must produce an expense bill showing that he has paid freight into East St. Louis, and on that evidence he is given the benefit of a rate one cent less than the East St. Louis proper rate. On the other hand, at Louisville, we have by publication established several different territories of origin; the rate varies according to the point of origin shown on the expense bill. I mean the rate south of the Ohio River earned by the Southern from Louisville to the destination. If that shipment originates west of the Mississippi River we do not carry the charges paid to Louisville; we simply charge from Louisville to Atlanta 21 cents; if it originates in Illinois, we will say Bowen, we charge him 22 cents if it originates in certain territory in Indiana we charge him 23 cents, if it originates in certain other territory in Indiana we charge 24 cents.

Transcript of Record, p. 354.

SEVENTH.

That the said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in admitting over the objection of Southern Railway Company the following testimony of the witness E. K. Voorhees, on cross-examination by St. Louis Hay & Grain Company:

Q. Did that privilege of unloading and loading (at Memphis) again make any difference in the through rate from one point to another?

A. It didn't in some territory; in some others it did.

Transcript of Record, p. 354.

EIGHTH.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in admitting over the objection of Southern Railway Company the following testimony of the witness E. K. Voorhees on cross-examination by St. Louis Hay & Grain Company:

Q. Do you grant a reconsigning privilege at Memphis?

A. No sir, not on hay.

Transcript of Record, p. 354.

NINTH.

That the said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in admitting over the objection of Southern Railway Company, the following testimony of the witness Joseph M. Denyven; on cross-examination by St. Louis Hay & Grain Company:

Q. Do you permit reconsignments at Cairo?

A. On hay?

Q. Yes?

A. No, sir.

Transcript of Record, p. 355.

TENTH.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in admitting over the objection of Southern Railway Company, the following testimony of the witness Joseph M. Denyven, on cross-examination by St. Louis Hay & Grain Company:

Q. You have answered in reference to a man taking a car down there (Cairo, Illinois) and unloading the hay into another car and sending it along. Suppose he took the car down there and did not unload it, but sent it along, would not the through rate be exactly the same as though he unloaded it?

A. Well, the through rate on a car that was not unloaded would be whatever the sums of the rates might be.

Q. So he would not pay any more if he unloaded than if he did not unload it?

A. Well, he would not pay any more than the combination.

Transcript of Record, p. 355.

ELEVENTH.

That the said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in admitting over the objection of Southern Railway Company the following testimony of the witness Robert L. McKellar, on cross-examination by St. Louis Hay & Grain Company:

Q. Could a man ship a carload of hay to Louisville from this section of Illinois and then load the hay into other cars and send the second car to a point in the southeast? Was that the practice?

A. Let me understand the question. You want to know what is the movement of a car at Louisville; go into a warehouse there and then reship the car from Louisville to the southeast?

Q. Yes?

A. It think it may be correctly said that there has been such a movement, although I will add that I think it is very lately.

Q. When they do unload it in that way is the through rate from the point of origin any more than it would be if they had not unloaded it?

A. Depend on where it came from. If it comes from a point that there is only one rate into Louisville, it will pay whatever the local rate may be from Louisville to final destination. If it comes from a point that there is only one rate into Louisville, say 6 cents or 9 cents per 100 pounds, if it gets into Louisville it would have to pay that 9 cents; and if it goes out by the Southern it will pay whatever the local rate may be from Louisville to final destination.

Transcript of Record, pp. 355, 356.

TWELFTH.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in admitting over the objection of Southern Railway Company the following testimony of the witness J. R. Peachy, on cross-examination by St. Louis Hay & Grain Company;

Q. Well, if it is true at the present time that East St. Louis dealers pay 2 cents, while Ohio River points and other points on your lines are allowed the privilege of reconsigning without extra charge, that would put the East St. Louis dealers at a disadvantage compared with the dealers at these other points, would it not?

A. Well, it might. Depends entirely upon the conditions presented at East St. Louis. The man who handles hay at East St. Louis warehouses has the benefit of other large markets, East St. Louis and St. Louis; he tests these markets and if he prefers to get a better price by shipping to the

southeast, he ships to the southeast, but the man at Cairo has no market to test, and therefore very little hay comes into Cairo that is unloaded and reloaded. The rates break at Cairo. You cannot charge a man any more than the local rate to Cairo and the local rate out. The Cairo man has no large market, as the East St. Louis man has.

Transcript of Record, p. 356.

THIRTEENTH.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in admitting over the objection of Southern Railway Company the following testimony of the witness James W. Dye, for St. Louis Hay and Grain Company.

Q. That is not the question, I asked you whether they do pay anything extra for the reconsigning privilege there (referring to points on the Ohio River, Memphis and Nashville)?

A. No, sir, they do not.

Transcript of Record, p. 356.

FOURTEENTH.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in admitting over the objection of Southern Railway Company, the following testimony of the witness, James W. Dye, for St. Louis Hay and Grain Company:

Q. Where is it they do not pay anything extra (meaning extra for reconsigning)?

A. Nashville, Tennessee; Cairo, Illinois; Evansville, Indiana; Memphis, Tennessee; Cincinnati, Ohio; and I believe Louisville, Kentucky, I am not sure.

Transcript of Record, p. 356.

FIFTEENTH.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in admitting over the objection of Southern Railway Company the following testimony of the witness James W. Dye, for St. Louis Hay & Grain Company:

Q. Are there dealers located at those points (referring to the points mentioned in the answer last above quoted) that is, dealers in hay in the same way you do, there?

A. Identically the same.

Q. Shipping to the same markets in the Southeast?

A. Yes, sir.

Q. In competition with you?

A. Very much competitors both buy and selling; they buy in my territory and sell in our Territory.

Transcript of Record, pp. 356, 357.

SIXTEENTH.

That the said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in admitting over the objection of Southern Railway Company the following testimony of the witness William J. Edwards, for St. Louis Hay & Grain Company:

Q. What is the fact about reconsignments down there, (meaning Nashville, Tennessee)? Is there any reloading of hay done?

A. Reconsigning is permitted.

Q. Is there any extra charges made over the charge for through shipments; anything that comes in?

A. No sir, there is not.

Transcript of Record, p. 357.

SEVENTEENTH.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in admitting over the objection of Southern Railway Company the following testimony of the witness, W. B. Harrison, for St. Louis Hay & Grain Company:

Q. Is there any charge for reconsigning at these points (Referring to Ohio River Points and Louisville and Memphis)?

A. No sir, none that I know of.

Q. How does it affect dealers in hay at East St. Louis?

A. It is a handicap for them in competing, especially with the Nashville Gateway of 2 cents per 100 pounds.

Q. Where do they compete?

A. In Southeast and Carolina territories.

Q. Do they also buy in the same markets north of East St. Louis?

A. Yes, sir.

Transcript of Record, p. 357.

EIGHTEENTH.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in admitting over the objection of Southern Railway Company, the following testimony of the witness, E. L. Bartlett, for St. Louis Hay & Grain Company:

Q. Do you know whether or not any extra charge is made for the reconsigning privilege at Ohio River points, and Nashville and Memphis?

A. Well, there is 2 cents per 100 pounds; 2 cents.

Q. At these points? At Ohio River points?

A. No, there is no extra charge there.

Q. How does it affect dealers at East St. Louis?

A. We are at a disadvantage. We are laboring here under disadvantage of about 2 cents per 100 pounds.

Q. On that account?

A. On that account, yes, sir. We are competing with them in Southeastern territory and the Carolinas.

Q. Also competing with them in buying in the territory north of East St. Louis?

A. Yes, sir. There is where we receive most of our hay.

Transcript of Record, pp. 357, 358.

NINETEENTH.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in overruling and denying the motion offered by Southern Railway Company at the close of all the evidence in the above entitled cause to strike out from the evidence and exclude from consideration of said case the Report and Opinion of the Interstate Commerce Commission introduced by St. Louis Hay and Grain Company and marked "Exhibit B" in its testimony in said Circuit Court, for the reason that said Interstate Commerce Commission, by said Report and Opinion, did not find the facts involved in said matter before said Interstate Commerce Commission, as required by Section 16 of the Act to Regulate Commerce, and also to strike out from the evidence and exclude from the consideration of this case all of the testimony introduced herein showing, or tending to show, that hay may be reconsigned at Cincinnati, Louisville, Evansville, Cairo, Memphis, Nashville, or at any or either of said places, without extra charge, and also to strike out all of the testimony introduced in evidence in reference to notations, or other data, contained in tariffs to which Southern Railway Company is not a party, which said motion is in words and figures as follows, to wit:

UNITED STATES OF AMERICA,
Eastern District of Illinois, } *ss:*

In the Circuit Court of the United States for the Eastern District of Illinois, to the May Term, A. D. 1906.

ST. LOUIS HAY & GRAIN COMPANY, Petitioner,
vs.
SOUTHERN RAILWAY COMPANY, Defendant.

Suit to Collect Reparation Fixed by Order of the Interstate Commerce Commission.

And now at the close of all the evidence offered in the above entitled suit, comes the defendant, Southern Railway Company, by Claudian B. Northrop and Edward C. Kramer, its attorneys, and moves the Court to strike out from the evidence and exclude from consideration of this case, the Report and Opinion of the Interstate Commerce Commission, introduced by petitioner herein, and marked "Exhibit B" of its testimony, for the reason that said Interstate Commerce Commission by said Report and Opinion did not find the facts involved in said matter before said Commission as required by Section 16 of the Act to Regulate Commerce.

Because said report and opinion cannot be introduced as *prima facie* evidence of any matters involved before said Commission because the facts are not found by the Commission as required by law.

Because said Report and Opinion fails to show that the issues in the case before the Interstate Commerce Commission were, and what facts the Commission found in regard to such issues and said Report and Opinion fails to make suitable reference to the evidence adduced before the Interstate Commerce Commission, in regard to any particular question where there was a conflict of evidence showing how

the Commission settled any disputed fact; because said Report and Opinion failed to state as a fact whether or not there was any undisputed evidence in reference to any of the facts.

Because said Report and Opinion of the Commission is wholly irrelevant to the issues made by the pleadings before this Court in this case and makes no reference whatever to the main and material issue in this cause, to wit, the reasonableness and justness of the reconsigning rate from East St. Louis to Southeastern points.

Because said Report and Opinion cannot be introduced as *prima facie* evidence of any matter involved in this suit,

And to strike out from the evidence and exclude from consideration of this case all of the testimony introduced herein showing or tending to show that hay may be reconsigned at Cincinnati, Louisville, Evansville, Cairo, Memphis, Nashville, or at any or either of said places without extra charge, because the petition filed before the Interstate Commerce Commission did not allege any undue or unreasonable prejudice or disadvantage against East St. Louis or against any person there located, and did not allege any undue or unreasonable preference or advantage in favor of said Ohio and Mississippi River Crossings, or in favor of any persons therein located, with reference to reconsignment charges, and no such issues were involved before the Interstate Commerce Commission, and none are involved here.

And to strike out all the testimony introduced in evidence in reference to notations or other data contained in tariffs to which Southern Railway Company is not a party. Because the Commission in its Report and Opinion found that no such issue was presented to it for trial.

CLAUDIAN B. NORTHROP,
EDWARD C. KRAMER,
Attorneys for Defendant.

Because said Report and Opinion of the Interstate Commerce Commission introduced in evidence by St. Louis Hay & Grain Company and marked "Exhibit B" of its testimony in said Circuit Court, does not contain a finding of facts involved in said matter before said Commission as required by Section 16 of the Act to Regulate Commerce; and because said Report and Opinion is not proper and competent evidence to be introduced as *prima facie* evidence of matter involved before said Commission for the reason that the facts are not found and set forth in said Report and Opinion by said Commission as required by law; and because said Report and Opinion fails to show what the issues in the said cause before the Interstate Commerce Commission were and what facts the Commission found in regard to such issues; said Report and Opinion failed to make suitable reference to the evidence adduced before the Interstate Commerce Commission in regard to any particular question where there was a conflict of evidence showing how the Commission settled such disputed fact; and because said Report and Opinion fails to state as a fact whether or not there was any disputed evidence in reference to any of the facts; and because said Report and Opinion of the Commission is wholly irrelevant to the issues made by the pleadings before this Court in this case and makes no reference whatever to the main and material issues in this case, to wit, the reasonableness and justness of the reconsigning rate from East St. Louis to Southeastern points; and because said Report and Opinion cannot be introduced as *prima facie* evidence of any of the matters involved in this case and for these reasons ought to be excluded from the evidence.

Because the evidence introduced herein showing or tending to show that hay may be reconsigned at Cincinnati, Louisville, Evansville, Cairo, Memphis, Nashville or any or either of said places without extra charge, is wholly

irrelevant to the issues involved in this case in this Court, because the petition filed before the Interstate Commerce Commission did not allege any undue or unreasonable prejudice or disadvantage against East St. Louis or against any person there located, and did not allege any undue or unreasonable preference or advantage in favor of said Ohio and Mississippi River Crossings, or in favor of any person thereat located, with reference to reconsignment charges on shipments of hay.

Because the tariff sheets and rates of other railway companies introduced in evidence in this case to which Southern Railway Company is not a party is irrelevant and incompetent testimony in this case.

Transcript of Record, pp. 358-360.

TWENTIETH.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in overruling and denying the motion offered by Southern Railway Company at the close of all the evidence introduced on the trial of this cause to remand the cause tried before the Interstate Commerce Commission, upon which reparation was ordered and enforcement of which is sought in this case, back to the Interstate Commerce Commission, which said motion is in words and figures as follows, to wit:

UNITED STATES OF AMERICA,
Eastern District of Illinois, } *ss:*

In the Circuit Court of the United States for the Eastern District of Illinois, to the May Term, A. D. 1906.

ST. LOUIS HAY & GRAIN COMPANY, Petitioner,
vs.
SOUTHERN RAILWAY COMPANY, Defendant.

Suit to Collect Reparation Fixed by Order of the Interstate Commerce Commission.

And now at the close of all the evidence in this case comes, defendant, Southern Railway Company, by its attorneys, Claudian B. Northrop and Edward C. Kramer, and moves the Court to remand the case tried before the Interstate Commerce Commission upon which reparation was ordered and enforcement of which is sought in this case, back to the Interstate Commerce Commission for the following reasons:

1. Because the issues presented to the Interstate Commerce Commission were not passed upon and determined by said Interstate Commerce Commission.

2. Because petition filed before the Interstate Commerce Commission by St. Louis Hay & Grain Company in said case, in the fifth paragraph thereof, alleges that the reconsigning rate charged on shipments of hay from East St. Louis to Southeastern points is unreasonable and that by reason thereof petitioner has been compelled to pay unreasonable and unjust rates for the transportation of hay from East St. Louis to Southeastern points, in violation of Section 1 of the Act of Congress to Regulate Commerce. Which said allegation was denied by the defendant in paragraph 5 of its answer filed in said case before the Interstate

Commerce Commission, and in addition to said direct denial is same paragraph 5 of defendant's answer, defendant, Southern Railway Company, alleged that the charge for reconsignment of hay from East St. Louis to Southeastern Points is in all cases invariably one cent less than the rate from East St. Louis proper to said Southeastern Points.

Said pleadings directly present the issue of the reasonableness and justness of the said reconsigning rate from East St. Louis to said Southeastern Points, which said issue was a material issue and was not passed upon by said Interstate Commerce Commission.

3. Defendant is entitled, as a matter of law, to have the Interstate Commerce Commission in the first instance pass upon all issues presented, and where the Interstate Commerce Commission fails to pass upon material issues presented to it, it is the duty of the Court to refer the matter back to the Interstate Commerce Commission to be proceeded in according to law.

4. Because said Interstate Commerce Commission did not make a report in writing in said case including findings of fact upon which the conclusions of the Interstate Commerce Commission were based as required by law, but instead thereof filed a report made up of mere conclusions which report failed to show what the issues in the case were, and what facts the Interstate Commerce Commission found in regard to such issues, and because said report failed to make suitable references to the evidence adduced before the Interstate Commerce Commission in regard to the particular questions and issues presented; and because said report failed to show whether or not there was any conflict in proof before the Interstate Commerce Commission, and failed to make reference to the testimony taken before it showing how the Interstate Commerce Commission had settled any disputed facts; and because said report failed to state whether or not the evidence in regard to some or any of the

issues was undisputed, that is to say, said report of the Interstate Commerce Commission failed to conform to the requirements of the law.

CLAUDIAN B. NORTHROP,
EDWARD C. KRAMER,
Attorneys for Defendant.

Because the Interstate Commerce Commission did not pass upon and determine the issues presented to it in this matter; and because the petition filed before the Interstate Commerce Commission in this matter in the 5th paragraph thereof alleges that the reconsigning rate charges on shipments of hay from East St. Louis to Southeastern points is unreasonable, and that by reason thereof petitioner, St. Louis Hay & Grain Company, has been compelled to pay unreasonable and unjust rates for the transportation of hay from East St. Louis to Southeastern points in violation of Section 1 of the Act to Regulate Commerce, which allegation was denied by defendant, Southern Railway, in the 5th paragraph of the answer filed by it before the said Commission, and the pleadings in said matter before the said Commission directly presented the issue of the reasonableness and justness of said reconsigning rate from East St. Louis to Southeastern points, which said issue was a material one and was not passed upon by said Commission.

Because Southern Railway Company is entitled as a matter of law to have the Interstate Commerce Commission in the first instance pass upon all issues presented, and where the Interstate Commerce Commission fails to pass upon material issues presented to it, it is the duty of the Circuit Court of the United States in a suit brought to enforce reparation made by the Commission to refer the matter back to the Commission to be proceeded in according to law.

Because said Commission did not make a report in writ-

ing in the case before it including findings of fact upon which the conclusions of the Commission were based as required by law, but instead thereof filed a report made up of mere conclusions which report failed to show what the issues in the case were and what facts the Interstate Commerce Commission found in regard to such issues; and because said report failed to make suitable reference to the evidence adduced before the Interstate Commerce Commission in regard to the particular questions and issues presented.

Because said report failed to show whether or not there was any conflict in the proof before it and failed to make reference to the testimony taken before it showing how it settled any disputed facts.

Because said report failed to state whether or not the evidence in regard to some or any of the issues was undisputed, that is to say, said report of the said Commission failed to conform to the requirements of law, and for these reasons this matter should be referred back to the Commission for further action.

Transcript of Record, pp. 360-363.

TWENTY-FIRST.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in overruling and denying the motion offered by the defendant at the close of all the evidence introduced on the trial of said cause to find the issues herein in favor of the defendant, Southern Railway Company, and to render judgment herein in favor of Southern Railway Company for its costs in this cause expended, which said motion is in words and figures as follows, to wit:

UNITED STATES OF AMERICA, } ss:
Eastern District of Illinois, }

In the Circuit Court of the United States for the Eastern District of Illinois, to the May Term, A. D. 1906.

ST. LOUIS HAY & GRAIN COMPANY, Petitioner,
vs.
SOUTHERN RAILWAY COMPANY, Defendant.

Suit to Collect Reparation Fixed by Order of the Interstate Commerce Commission.

And now at the close of all the evidence in the above entitled suit comes the defendant Southern Railway Company by its attorneys, Claudian B. Northrop and Edward C. Kramer and moves the Court to find the issues herein in favor of the defendant, and render judgment herein in favor of the defendant for its costs in this cause expended, and for reason for said motion the defendant states that the evidence herein is wholly insufficient to sustain a finding and judgment in favor of the petitioner.

CLAUDIAN B. NORTHROP,
EDWARD C. KRAMER.

Because all of the evidence which is tendered herewith shows that it is wholly insufficient to support a finding in favor of the St. Louis Hay & Grain Company and a judgment in its favor enforcing the order made by the Interstate Commerce Commission; and because said evidence conclusively shows that the Southern Railway Company is entitled to a judgment dismissing the petition and for its costs in this cause expended.

Transcript of Record, pp. 363-364.

TWENTY-SECOND.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in refusing to hold as law the Fourth proposition of law submitted by Southern Railway Company at the close of all the evidence introduced on the trial of this cause, which said proposition of law is in words and figures as follows, to wit:

The Report of the Interstate Commerce Commission and its conclusions entitled "Report and Opinion of the Commission in St. Louis Hay & Grain Company vs. Mobile & Ohio Railroad Company *et al.*," introduced in evidence in this case in this Court by petitioner and marked petitioner's "Exhibit B," does not contain findings of fact and findings of fact are not so prepared and arranged in said Report as required by law so that said report can be introduced as evidence in this case.

Because the Report and Opinion of the Commission introduced as evidence therein as Petitioner's (St. Louis Hay & Grain Company) "Exhibit B" does not find the facts, and the facts are not so prepared and arranged in said report so that the same may be introduced as evidence.

Transcript of Record, p. 364.

TWENTY-THIRD.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in refusing to hold as law the seventh proposition of law submitted by the Southern Railway Company at the close of all the evidence introduced on the trial of this cause, which said proposition of law is in words and figures as follows, to wit:

That one of the material issues made before the Commission in this case was whether or not the reconsigning rate from East St. Louis to Southeastern points was a reason-

able and just rate; that this issue was a material one in this case, and the Commission did not pass upon and determine the same.

Because the petition filed before the Interstate Commerce Commission and filed herein as Petitioner's (St. Louis Hay & Grain Company) "Exhibit B" alleged in paragraph 5 thereof, that the reconsigning rate from East St. Louis to Southeastern points was unreasonable and unjust, which allegations in said petition was denied by the answer of the Southern Railway Company before said Commission, which issue was a material one and the Report and Conclusions of the Commission filed herein as Petitioner's "Exhibit B" shows that the Commission did not pass upon said issue.

Transcript of Record, p. 364.

TWENTY-FOURTH.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in refusing to hold as law the ninth proposition of law submitted by Southern Railway Company at the close of all the evidence introduced on the trial of this cause, which said proposition of law is in words and figures as follows to wit:

The petition filed before the Interstate Commerce Commission introduced herein as petitioner's "Exhibit A" in this case, does not complain of any undue or unreasonable prejudice or disadvantage to the localities and markets of East St. Louis or St. Louis; nor of any undue or unreasonable preference or advantage to Cincinnati, Louisville, Evansville, Cairo, Memphis and Nashville, or either or any of them or other localities; and no issue of any undue or unreasonable prejudice or disadvantage against, or undue or unreasonable preference or advantage in favor of any localities or markets was presented to the Commission in said case

for determination. And there is no such issue in this case before this Court.

Because in the petition introduced in evidence herein and marked "Exhibit A" there is no allegation of any undue or unreasonable prejudice or disadvantage against the markets and localities of East St. Louis, nor is there any allegation of any undue or unreasonable preference or advantage in favor of the markets and localities of Cincinnati, Louisville, Evansville, Cairo, Memphis and Nashville, or either or any of them or other localities; nor is there any allegation in the pleadings before this Court in reference to such matters, and no such issue is made by the pleadings in this Court.

Transcript of Record, pp. 364-365.

TWENTY-FIFTH.

That said Circuit Court of Appeals erred because it failed to adjudge that the Circuit Court erred in refusing to hold as law the nineteenth proposition of law submitted by Southern Railway Company at the close of all the evidence introduced on the trial of this cause, which said proposition of law is in words and figures as follows, to wit:

St. Louis Hay & Grain Company in its petition filed before the Interstate Commerce Commission in this case alleges that the reconsigning rate on hay from East St. Louis to Southeastern points is unreasonable and unjust. This allegation was denied by defendant, Southern Railway Company, in its answer filed before the Interstate Commerce Commission.

This issue of reasonableness is again made and raised by the pleadings in this Court.

On this issue the only question is the reasonableness of the entire charge to the party who is charged.

It is not competent for St. Louis Hay & Grain Company

to dissect the accounts of Southern Railway Company, allow this item, disallow that and manipulate the accounts of the railroad in its own way.

The reasonableness of the total charge on reconsigned hay from East St. Louis to Southeastern Points is the sole question open on this issue; and such items as the alleged extra cost, charge, or expense of two cents per hundred pounds for transfer or reconsigning hay at East St. Louis, or such items as the divisions of the total through rate by and between the several carriers forming the through joint line from East St. Louis to Southeastern points or such items as one cent bridge toll at Ohio River crossings, are in nowise material to the issue of the reasonableness of the total charge to the shipper for the total service of the transportation of hay reconsigned from East St. Louis to Southeastern Points.

It is not competent for the shipper to dissect and separate the several services of switching, transferring, side tracking, coupling and uncoupling cars, breaking up cuts of cars, making up trains, ferrying or bridging rivers, etc., at various junctions and other points on the through route; these items or similar items cannot be segregated from the whole by the shipper and in nowise concern him, the only question open to him being the reasonableness of the total rate for the entire service rendered to him.

Because said proposition of law is involved in this suit. The evidence shows that the complainant, the St. Louis Hay & Grain Company, has segregated the division of the total through rate on reconsigned hay from East St. Louis to Southeastern points and attempted to confine the inquiry to the reasonableness of that portion of the through rate alone, testing same entirely by the reference to the cost of switching, transferring and delay of cars at East St. Louis and not taking into consideration the cost and expense of

the service at other junction points or other places on the through line from East St. Louis to Southeastern points, and not taking into consideration the cost and expense and value of the entire service for the entire haul.

Transcript of Record, pp. 366, 367.

TWENTY-SIXTH.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in refusing to hold as law the sixth proposition of law as submitted by Southern Railway Company as applicable in this case, which said sixth proposition of law as submitted is in words and figures as follows, to wit:

Where a petition and complaint is filed before the Interstate Commerce Commission under and by virtue of the Act to Regulate Commerce, and issues are made upon such petition and complaint, it is the duty of the Commission to pass upon each and every material issue made, and if the Commission upon an investigation makes an order for reparation and suit is brought in a Circuit Court of the United States to enforce such order, and it is there made to appear that said Commission did not pass upon each and every material issue made before the Commission, it is the duty of the Circuit Court of the United States to remand the case to the said Commission for further proceedings according to law.

And in modifying the said proposition of law as submitted, so as to read as follows, to-wit:

Where a petition and complaint is filed before the Interstate Commerce Commission under and by virtue of the Act to regulate Commerce and issues are made upon such petition and complaint, it is the duty of the Commission to pass upon each and every material issue made, and if the Commission upon an investigation makes an order for reparation and suit is brought in a Circuit Court of the

United States to enforce such order, and it is there made to appear that said Commission did not pass upon each and every material issue made before the Commission, it is the duty of the Circuit Court of the United States to refuse to enforce the order.

Because where a petition and complaint is filed before the Interstate Commerce Commission under and by virtue of the Act to Regulate Commerce, and issues are made upon such petition and complaint, it is the duty of the Commission to pass upon each and every material issue made, and if the Commission upon investigation makes and order for reparation and suit is brought in a Circuit Court of the United States to enforce such order, and it is there made to appear that said Commission did not pass upon each and every material issue made before the Commission, it is the duty of the Circuit Court of the United States to remand the cause to the said Commission for further proceedings according to law, and because the said proposition of law as submitted is material to the issues involved in this case, and because the Southern Railway Company having presented to the Court on the trial of this cause a motion to remand same to the Interstate Commerce Commission for further proceedings according to law, it was entitled to have the Court pass upon a proposition of law as to whether or not under the conditions named in said proposition of law, it was the duty of the court to remand the said case as herein stated.

Transcript of Record, pp. 366-367.

TWENTY-SEVENTH.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in refusing to hold as law the eighteenth proposition of law as submitted by Southern Railway Company as applicable in this case,

which said eighteenth proposition of law, as submitted, is in words and figures as follows, to wit:

In determining the reasonableness and justness or unreasonableness and unjustness of a rate the shipper is only concerned in the total charge made and as to whether or not the charge as a whole is reasonable and just. He is not concerned in the various items making up the entire charge and cannot inquire into the reasonableness or unreasonableness of an item or items making up the entire charge.

And in modifying the said proposition, as submitted, so as to read as follows, to wit:

In determining the reasonableness and justness or the unreasonableness and unjustness of a rate the shipper is only concerned in the total charge made and as to whether or not the charge as a whole is reasonable and just. He is not concerned in the various items making up the entire charge and cannot alone and independently inquire into the reasonableness or unreasonableness of an item or items making up the entire charge.

Because in determining the reasonableness and justness or unreasonableness and unjustness of a rate, the shipper is only concerned in the total charge made, and as to whether or not as a whole is reasonable and just. He is not concerned in the various items making up the entire charge, and cannot inquire into the reasonableness or unreasonableness of an item or items making up the entire charge.

Because the said proposition as submitted is material to the issues involved in this case, and because the proposition of law as modified by the Court unduly broadens the scope of the inquiry that a shipper may make into the reasonableness or unreasonableness of an item or items making up the entire charge.

Transcript of Record, pp. 367-368.

TWENTY-EIGHTH.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in rejecting and refusing to find the first special finding of fact submitted by Southern Railway Company on the trial of this cause, which said first special finding of fact is in words and figures as follows, to wit:

Petitioner, St. Louis Hay & Grain Company, has two warehouses at East St. Louis, Illinois, one located immediately south of Eads Bridge between Front street and the Mississippi River. This warehouse is on the tracks of the Wiggins Ferry Company, and is known as the Union Warehouse. The other warehouse is known as the National Warehouse and is located on the corner of 10th street and the Southern Railway Company's tracks.

Because the said first special finding of fact is material to the issues involved in this case; because the said first special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said first special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this cause do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said first special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said first special finding of fact so submitted by Southern Railway Company, nor do they contain the said first special finding of fact, nor the substance thereof.

Transcript of Record, p. 368.

TWENTY-NINTH.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in rejecting and refusing to find the second special finding of fact submitted by Southern Railway Company on the trial of this cause, which said second special finding of fact is in words and figures as follows, to wit:

There are about 75 miles of switch tracks at East St. Louis of which the Southern Railway Company owns about 20 miles.

Southern Railway Company has tracks at East St. Louis which reach from a point above the Merchants' Bridge near what is known as the North Incline, running through East St. Louis to a point below East St. Louis which is known as the Dyke Yard, and at different points in East St. Louis are yards belonging to the Southern Railway Company, respectively known as Brooklyn Yards, Denverside Yards and Sixth Street Yards and the Dyke Yard, all necessary and used for the purpose of switching cars from and to trains going to the South and from and to various industries located in East St. Louis, Illinois. The switching and transfer situation at East St. Louis is complicated.

Because the said special second finding of fact is material to the issues involved in this case; because the said second special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the second special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said second special finding of fact is

material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said second special finding of fact so submitted by Southern Railway Company, nor do they contain the said second special finding of fact nor the substance thereof.

Transcript of Record, pp. 368-369.

THIRTIETH.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in rejecting and refusing to find the third special finding of fact submitted by Southern Railway Company on the trial of this cause, which said third special finding of fact is in words and figures as follows, to wit:

Rates south of the Ohio River are the foundation rates for hay going from East St. Louis to southeastern territory.

Because the third special finding of fact is material to the issues involved in this case; because the said third special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said third special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said third special finding of fact is material and necessary to be found and is material and necessary to a proper decision of the case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include

all that is material in the said third special finding of fact so submitted by Southern Railway Company, nor do they contain the said third special finding of fact, nor the substance thereof.

Transcript of Record, p. 369.

THIRTY-FIRST.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in rejecting and refusing to find the fourth special finding of fact submitted by Southern Railway Company on the trial of this cause, which said fourth special finding of fact is in words and figures as follows, to wit:

Grain and hay originating in the States of Ohio, Indiana, Illinois, Nebraska, Missouri, Kansas, Arkansas and Texas, is shipped into Southeastern Territory. This hay and grain crosses the Ohio River at the gateways of Cincinnati, Louisville, Evansville, Cairo, etc., and crosses the Mississippi River at the gateways of East St. Louis, Cairo, Memphis, New Orleans, etc.

Because the said fourth special finding of fact is material to the issues involved in this case because the said fourth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said fourth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said fourth special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by

the Court and recited in its final order and judgment in this case do not include all that is material in said fourth special finding of fact so submitted by Southern Railway Company, nor do they contain the said fourth special finding of fact, nor the substance thereof.

Transcript of Record, pp. 369, 370.

THIRTY-SECOND.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in rejecting and refusing to find the fifth special finding of fact submitted by Southern Railway Company on the trial of this cause, which said fifth special finding of fact is in words and figures as follows, to wit:

Southeastern Territory comprises nearly all of Alabama, part of Tennessee, all of Georgia, all of Florida, except the extreme western part of Florida, and part of South Carolina. Atlanta is a principal point in the Southeastern Territory.

Because the said fifth special finding of fact is material to the issues involved in this cause; because the said fifth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said fifth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said fifth special finding of fact is material and necessary to be found and is material and necessary to the proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in said fifth special

finding of fact so submitted, by Southern Railway Company, nor do they contain the said fifth special finding of fact, nor the substance thereof.

Transcript of Record, pp. 370-371.

THIRTY-THIRD.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in rejecting and refusing to find the sixth special finding of fact submitted by Southern Railway Company on the trial of this cause, which said sixth special finding of fact is in words and figures as follows, to wit:

East St. Louis is classed with St. Louis and together they constitute the largest primary hay market in the United States.

Because the said sixth special finding of fact is material to the issues involved in this case; because the said sixth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said sixth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said sixth special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in said sixth special finding of fact so submitted by Southern Railway Company, nor do they contain the said sixth special finding of fact, nor the substance thereof.

Transcript of Record, p. 371.

THIRTY-FOURTH.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in rejecting and refusing to find the seventh special finding of fact submitted by Southern Railway Company on the trial of this cause, which said seventh special finding of fact is in words and figures as follows, to wit:

The defendant, Southern Railway Company, in the introduction of its evidence in this case used Atlanta, Ga., as a representative point in Southeastern Territory, with reference to local shipments of hay from East St. Louis to Southeastern Territory, and reconsigned shipments of hay from East St. Louis to Southeastern Territory and through shipments of hay originating at points North and East of East St. Louis and passing through East St. Louis to Southeastern Territory, and used Bowen, Ill., as a representative point in through shipments of hay originating north and west of East St. Louis and passing through East St. Louis to Southeastern Territory.

Atlanta, Georgia, fairly represents points of consumption in Southeastern Territory, and Bowen, Illinois, fairly represents points of production north and west of East St. Louis, with reference to rates and shipments involved in this suit:

Because the said seventh special finding of fact is material to the issue involved in this case; because the said seventh special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said seventh special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or neces-

sary to a proper decision of the case; because the said seventh special finding of fact is material and necessary to be found, and is material and necessary to a proper decision of this case; and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said seventh special finding of fact so submitted by Southern Railway Company, nor do they contain the said seventh special finding of fact, nor the substance thereof.

Transcript of Record, pp. 371-372.

THIRTY-FIFTH.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in rejecting and refusing to find the eighth special finding of fact submitted by Southern Railway Company on the trial of this cause, which said eighth special finding of fact is in words and figures as follows, to wit:

The rate on hay from the Ohio River crossings to Atlanta from June 1st, 1903, to February 1st, 1905, was 24 cents per hundred pounds.

The defendant, Southern Railway Company, during said time had a local rate on hay from East St. Louis to Atlanta of 5 cents above the rates from the Ohio River crossings, viz: 29 cents per hundred pounds and a reconsigning rate of 4 cents above the rate from Ohio River crossings, viz: 28 cents per hundred pounds and during said time accepted from other connecting railway lines a charge of 2 cents above the rates from Ohio River crossings for its haul from East St. Louis to Southeastern points which was 26 cents per hundred pounds to Atlanta, on through shipments which had originated at points north and west of East St. Louis;

Because the said eighth special finding of fact is material

to the issues involved in this case; because the said eighth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said eighth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said eighth special finding of fact is material and necessary to be found, and is material and necesasry to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is materal in the said eighth special finding of fact so submitted by Southern Railway Company, nor do they contain the said eighth special finding of fact, nor the substance thereof.

Transcript of Record, p. 372.

THIRTY-SIXTH.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in rejecting and refusing to find the ninth special finding of fact submitted by Southern Railway Company on the trial of this cause, which said ninth special finding of fact is in words and figures as follows, to wit:

That in all shipments in which defendant, Southern Railway Company, accepted a charge of 2 cents above the rates from Ohio River crossings for hauling hay from East St. Louis to points in Southeastern Teritory they were shipments that had originated at points nrth and west of East St. Louis or beyond East St. Louis and were hauled into East St. Louis by a connecting carrer in which the con-

necting carrier presented to Southern Railway Company a way bill showing that the hay had originated at some point north or west or beyond East St. Louis and had been hauled into East St. Louis by said connecting carrier and was destined to it to some point in Southeastern Territory and said Southern Railway Company accepted the car or cars so delivered from such connecting carrier and hauled them to the point of destination, and accepted as its share of the entire charge a charge of 2 cents per hundred pounds above the rate from Ohio River crossings to points of destination, and in the entire transaction the Southern Railway Co. dealt with and received its share of the through charges from the connecting carrier and had no transaction of any kind or character with the shipper and if the original bill of lading was not from the point of origin to point of final destination, or in other words the point of destination was changed while the hay was in transit or after it had arrived at East St. Louis, this fact was not made known to Southern Railway Company:

Because the said ninth special finding of fact is material to the issues involved in this case; because the said ninth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said ninth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said ninth special finding of fact is material and necessary to be found, and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do

not include all that is material in the said ninth special finding of fact so submitted by Southern Railway Company, nor do they contain the said ninth special finding of fact nor the substance thereof.

Transcript of Record, p. 373.

THIRTY-SEVENTH.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in rejecting and refusing to find the tenth special finding of fact submitted by Southern Railway Company on the trial of this cause, which said tenth special finding of fact is in words and figures as follows, to wit:

In all cases in which Southern Railway Company charged the reconsigning rate of 4 cents above the rate from Ohio River crossings to points in Southeastern Territory, they were cases in which the shipper presented to Southern Railway Company an expense bill showing that he had paid transportation charges on a carload of hay from some point of origin north or west or beyond East St. Louis to East St. Louis. Upon this evidence, Southern Railway Company billed a carload of hay for the shipper from East St. Louis to a point in Southeastern territory at the reconsigning rate and in the entire transaction dealt only with the shipper and had no transaction of any kind or character with a connecting carrier and these reconsignment charges were paid by the shipper to Southern Railway Company.

And in all such shipments the shipper was not compelled to ship out the identical hay that had been shipped in as shown by his expense bill, but he might ship any hay he had in his warehouse or other places in East St. Louis.

Because the said tenth special finding of fact is material to the issues involved in this case; because the said tenth special finding of fact is supported by the undisputed evidence

introduced on the trial of this case; because the said tenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the court do not contain all that is material or necessary to a proper decision of the case; because the said tenth special finding of fact is material and necessary to be found and is material necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said tenth special finding of fact so submitted by Southern Railway Company, nor do they contain the said tenth special finding of fact, nor the substance thereof.

Transcript of Record, pp. 373-374.

THIRTY-EIGHTH.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in rejecting and refusing to find the eleventh special finding of fact submitted by Southern Railway Company on the trial of this cause, which said eleventh special finding of fact is in words and figures as follows, to wit:

All of the tariffs introduced in evidence in this case which show that Southern Railway Company accepts a charge of 2 cents above the rates from the Ohio River crossings to Southeastern Territory on hay originating at points north or west or beyond East St. Louis and shipped directly through East St. Louis to points in Southeastern territory show such charge to be a division of the through rate;

Because the said eleventh special finding of fact is material to the issues involved in this case; because the said eleventh special finding of fact is supported by the undis-

puted evidence introduced on the trial of this case; because the said eleventh special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material and necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said eleventh special finding of fact is material and necessary to be found, and is material and necessary to a proper decision of this case; and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said eleventh special finding of fact so submitted by Southern Railway Company, nor do they contain the said eleventh special finding of fact, nor the substance thereof.

Transcript of Record, pp. 374-375.

THIRTY-NINTH.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in rejecting and refusing to find the twelfth special finding of fact submitted by Southern Railway Company on the trial of this cause, which said twelfth special finding of fact is in words and figures as follows, to wit:

The reconsigning rate on hay of 4 cents above the rate from Ohio River crossings was made by and is the result of competition.

Because the said twelfth special finding of fact is material to the issues involved in this case; because the said twelfth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said twelfth special finding of fact is necessary to a proper decision of the case; because the special findings of fact sub-

stituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said twelfth special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said twelfth special finding of fact so submitted by Southern Railway Company, nor do they contain the said twelfth special finding of fact, nor the substance thereof.

Transcript of Record, p. 375.

FORTIETH.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in rejecting and refusing to find the thirteenth special finding of fact submitted by Southern Railway Company on the trial of this cause, which said thirteenth special finding of fact is in words and figures as follows, to wit:

That the rate on grain and hay from Ohio River crossings to Southeastern territory was made by and was the result of competition among rail lines hauling grain and hay from such Ohio River crossings to Southeastern territory, and the reconsigning rate of 4 cents above the rate from Ohio River crossings to Southeastern Territory was made by and was the result of competition among railway companies hauling grain and hay from East St. Louis to Southeastern territory;

Because the said thirteenth special finding of fact is material to the issues involved in this case; because the said thirteenth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because

the said thirteenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said thirteenth special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said thirteenth special finding of fact so submitted by Southern Railway Company, nor do they contain the said thirteenth special finding of fact, nor the substance thereof.

Transcript of Record, pp. 375-376.

FORTY-FIRST.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in rejecting and refusing to find the fourteenth special finding of fact submitted by Southern Railway Company on the trial of this cause, which said fourteenth special finding of fact is in words and figures as follows, to wit:

The following are the distances by the various lines from and to points involved in this Controversy:

East St. Louis to Atlanta—Via L. & N.—N. C. & St. L.:

To Evansville	162	miles
" Nashville	157	"
" Chattanooga	151	"
" Atlanta	138	"
	608	"

Nashville to Atlanta—L. & N.—N. C. & St. L.:

L. & N.	157 miles
Total	446 "
N. C. & St. L.	289 "

Louisville to Atlanta—Sou. Ry.—C. N. O. & T. P.—W. & A.:

To Danville	94 miles
" Chattanooga	222 "
Beyond	138 "
	454 "

Cincinnati to Atlanta via I. C.—N. C. & St. L.:

I. C. to Martin	60 miles
N. C. & St. L. beyond	430 "
	490 "

Via I. C.—Sou. Ry. and Emory Gap:

I. C. to Nashville	196 miles
To Chattanooga	151 "
Beyond	138 "
	485 "

Memphis to Atlanta via K. C. M. & B. and Sou. Ry.:

To Birmingham	251 miles
Southern Railway	167 "
	418 "

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East St. Louis to Cairo	151	miles
East St. Louis to Evansville	162	"
East St. Louis to Louisville	271	"

Because the said fourteenth special finding of fact is material to the issues involved in this case; because the said fourteenth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said fourteenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said fourteenth special finding of fact is material and necessary to be found and is material and necessary to a proper decision of the case; and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said fourteenth special finding of fact so submitted by Southern Railway Company, nor do they contain the said fourteenth speical finding of fact nor the substance thereof.

Transcript of Record, pp. 376-377.

FORTY-SECOND.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in rejecting and refusing to find the fifteenth special finding of fact submitted by Southern Railway Company on the trial of this cause, which said fifteenth special finding of fact is in words and figures as follows, to wit:

St. Louis Hay & Grain Company frequently makes through shipments from point of original purchase to point

of destination without reconsigning. The right of making through shipments from point of origin to a point of ultimate destination is open to St. Louis Hay & Grain Company without discrimination:

Because the said fifteenth special finding of fact is material to the issues involved in this case; because the said fifteenth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said fifteenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; and because the special finding of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said fifteenth special finding of fact so submitted by Southern Railway Company nor do they contain the said fifteenth special finding of fact nor the substance thereof.

Transcript of Record, pp. 377-378.

FORTY-THIRD.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in rejecting and refusing to find the sixteenth special finding of fact submitted by Southern Railway Company on the trial of this cause, which said sixteenth special finding of fact is in words and figures as follows, to wit:

The reconsigning rate of 4 cents above the rate from Ohio River crossings to Southeastern Territory is shown to be just and reasonable for the following reasons:

The evidence in this case shows:

1. That said reconsigning rate is the result of competition in the transportation of hay and grain by rail lines and the water lines.

2. That the rate on hay from East St. Louis to Atlanta since 1879 has been reduced from 54 cents per hundred pounds to 28 cents per hundred pounds.

3. That the reconsigning rate on hay from East St. Louis to Southeastern points is low when compared with the rate on hay in other localities where the circumstances and conditions are similar.

4. Because the rate on hay from East St. Louis to Southeastern Territory is affected by competition hay there meets in coarse foods and substitutes for hay.

5. That said rate is reasonable and just in the opinion of expert traffic men.

6. Because the rate on hay from East St. Louis to Southeastern points is affected by the competition that hay shipped to Southeastern points has to meet in hay and other like products shipped from other markets.

7. Hauling grain is more remunerative to carriers than hauling hay and the reconsignment rates on hay and grain are the same, while in some other sections the rate on hay is from 25 to 50 per cent higher than the rate on grain.

8. This rate has been made by the short lines. Southern Railway Company necessarily had to meet these rates or not participate in the traffic, and it is one of the long lines.

9. East St. Louis-St. Louis under said rates has grown to be the largest hay market in the United States.

Because the said sixteenth special finding of fact is material to the issues involved in this case; because the said sixteenth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said sixteenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact

substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material and necessary to a proper decision of this case; and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said sixteenth special finding of fact so submitted by the defendant, nor do they contain the said sixteenth special finding of fact, nor the substance thereof.

Transcript of Record, pp. 378-379.

FORTY-FOURTH.

The said Circuit Court of Appeals erred because it failed to adjudge and decree that said Circuit Court erred in rejecting and refusing to find the seventeenth special finding of fact submitted by the defendant on the trial of this cause, which said seventeenth special finding of fact is in words and figures as follows, to wit:

A through shipment of hay from points north and west and beyond East St. Louis to Southeastern points received by Southern Railway Company from a connecting carrier at East St. Louis requires two necessary switching movements on the part of Southern Railway Company in receiving said car from the connecting carrier and placing same in the train for the Southeast.

A reconsigned shipment from National Warehouse located on the line of Southern Railway Company in East St. Louis requires three necessary switching movements on the part of Southern Railway Company in placing the empty car at the warehouse, taking out the loaded car and placing it on the train for the Southeast. That a reconsigned shipment from Union Warehouse requires ten necessary switching move-

ments in placing the empty car at the warehouse and receiving the loaded car and placing it in the train for the Southeast, five of these movements are made by the Wiggins Ferry Company.

Because the said seventeenth special finding of fact is material to the issues involved in this case; because the said seventeenth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said seventeenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said seventeenth special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said seventeenth special finding of fact so submitted by Southern Railway Company, nor do they contain the said seventeenth special finding of fact, nor the substance thereof.

Transcript of Record, pp. 379-380.

FORTY-FIFTH.

That said Circuit Court of Appeals erred because it failed to adjudge and decree that said Circuit Court erred in rejecting and refusing to find the eighteenth special finding of fact submitted by Southern Railway Company on the trial of this cause; which said eighteenth special finding of fact is in words and figures as follows, to wit:

The cost of a switching movement in the case of a reconsigned shipment to Southern Railway Company in East St.

Louis and the cost of a switching movement in connection with through shipments in East St. Louis is 30 cents per movement, and Southern Railway Company pays to Wiggins Ferry Company $1.50 for the five movements made by it in a reconsignment shipment from the Union Warehouse over the lines of the Southern Railway Company.

Because the said eighteenth special finding of fact is material to the issues involved in this case; because the said eighteenth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said eighteenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said eighteenth special finding of fact is material and necessary to be found and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in said eighteenth special finding of fact so submitted by Southern Railway Company, nor do they contain the said eighteenth special finding of fact nor the substance thereof.

Transcript of Record, p. 380.

FORTY-SIXTH.

That said Circuit Court of Appeals erred because it failed to adjudge and decree that said Circuit Court erred in rejecting and refusing to find the nineteenth special finding of fact submitted by the defendant, on the trial of this cause, which said nineteenth special finding of fact is in words and figures as follows, to wit:

A car is in use in East St. Louis on an average of one day in a through shipment and a car is in use in East St. Louis on an average of five days in each reconsigned shipment.

Because the said nineteenth special finding of fact is material to the issues involved in this case; because the said nineteenth special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said nineteenth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said nineteenth special finding of fact is material and necessary to be found, and is material and necessary to a proper decision of the case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said nineteenth special finding of fact so submitted by Southern Railway Company, nor do they contain the said nineteenth special finding of fact, nor the substance thereof.

Transcript of Record, pp. 380-381.

FORTY-SEVENTH.

That said Circuit Court of Appeals erred because it failed to adjudge and decree that said Circuit Court erred in rejecting and refusing to find the twentieth special finding of fact submitted by the defendant on the trial of this cause, which said twentieth special finding of fact is in words and figures as follows, to wit:

It costs Southern Railway Company 52 cents per day to actually maintain its freight cars.

Because the said twentieth special finding of fact is material to the issues involved in this case; because the said twentieth special finding of fact is supported by the undisputed evidence introduced on the trial of this cause; because the said twentieth special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to be found; because the said special findings of fact substituted by the Court do not contain all that is material or necessary to a proper decision of the case; because the said twentieth special finding of fact is material and necessary to be found, and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said twentieth special finding of fact so submitted by the defendant, nor do they contain the said twenteith special finding of fact, nor the substance thereof.

Transcript of Record, p. 381.

FORTY-EIGHTH.

That said Circuit Court of Appeals erred because it failed to adjudge and decree that said Circuit Court erred in rejecting and refusing to find the twenty-first special finding of fact submitted by the Southern Railway Company on the trial of this cause, which said twenty-first special finding of fact is in words and figures as follows, to wit:

75 cents per day is a fair and reasonable charge to make for a car while in use at East St. Louis in a reconsigned shipment:

Because the said twenty-first special finding of fact is material to the issues involved in this case; because the said twenty-first special finding of fact is supported by the undisputed evidence introduced on the trial of this case; because the said twenty-first special finding of fact is necessary to a proper decision of the case; because the special findings of fact substituted by the Court in its final order and judgment in this case do not contain all that is material or necessary to a proper decision of the case; because the said twenty-first special finding of fact is material and necessary to be found, and is material and necessary to a proper decision of this case, and because the special findings of fact substituted by the Court and recited in its final order and judgment in this case do not include all that is material in the said twenty-first finding of fact so submitted by the defendant, nor do they contain the said twenty-first special finding of fact, nor the substance thereof.

Transcript of Record, p. 382.

FORTY-NINTH.

That said Circuit Court of Appeals erred because it failed to adjudge and decree that said Circuit Court erred in overruling and denying the motion of Southern Railway Company to set aside the judgment of the Court rendered herein and the general and special findings of fact herein, and the propositions of law found herein, and made and entered by the Court in this suit, and to grant a new trial herein, which said motion is in words and figures as follows, to wit:

UNITED STATES OF AMERICA,
Eastern District of Illinois. } ss:

In the Circuit Court of the United States for the Eastern District of Illinois, to the May Term, A. D. 1906.

ST. LOUIS HAY & GRAIN COMPANY, Petitioner,
vs.
SOUTHERN RAILWAY COMPANY, Defendant.

Suit to Collect Reparation Fixed by Order of the Interstate Commerce Commission.

And now on this 25th day of June, A. D. 1906, comes the defendant, Southern Railway Company, by Claudian B. Northrop and Edward C. Kramer, its attorneys, and moves the Court to set aside that judgment of the Court rendered herein, and the general and special findings of fact herein, and made and entered by the Court in this suit; and to grant a new trial herein, and for grounds of said action shows unto the Court the following:

1. The Court erred in admitting improper, irrelevant, immaterial and incompetent evidence on the trial of said cause over the objections of defendant (Southern Railway Company).

2. The Court erred in refusing to admit proper, relevant, material and competent evidence offered by the defendant on the trial of said suit.

3. The Court erred in refusing the 4th, 7th, 9th and 19th propositions of law submitted by the defendant, and each of them.

4. The Court erred in refusing the 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th,

17th, 18th, 19th, 20th and 21st special findings of fact submitted by defendant, and each of them.

5. The Court erred in holding as law the propositions of law submitted by the petitioner, and each of them.

6. The Court erred in finding the special findings of fact submitted by petitioner, and each of them.

7. The general and special findings of fact found by the Court are contrary to and not supported by the evidence in the case.

8. The judgment and propositions of law held by the Court are not supported by the law in the case.

9. Because the Court erred in refusing defendant's motion to find the issues in this suit in favor of the defendant and to render judgment in favor of the defendant.

10. Because the Court refused defendant's motion to remand the case back to the Interstate Commerce Commission.

11. And for other good and sufficient reasons.

CLAUDIAN B. NORTHROP,
EDWARD C. KRAMER,
Attorneys for Defendant.

Transcript of Record, pp. 382-383.

FIFTIETH.

That said Circuit Court of Appeals erred because it failed to adjudge and decree that said Circuit Court erred in finding in its first special finding of fact that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and opinion in substance the following fact:

Large quantities of hay produced in territory east, north and west of East St. Louis are consumed in Southeastern Territory and much of it is carried through the East St. Louis Gateway, and passes over the defendant's lines of railway from East St. Louis to points south of the Ohio

River. With the exception of the Illinois Central, defendant's lines terminate in East St. Louis, and generally also, lines of railway over which the hay is carried from said producing points to East St. Louis terminate at that point: And in further finding that the said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court, and in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not, in its Report and Opinion, find said facts in substance, because there was no evidence introduced on the trial of this cause to support the same.

Transcript of Record, pp. 383-384.

FIFTY-FIRST.

That said Circuit Court of Appeals erred because it failed to adjudge and decree that said Circuit Court erred in finding in its second special finding of fact that, on the hearing of the cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

For the transportation from East St. Louis to said Southeastern points defendants apply a proportional rate which is 2c per hundred pounds greater than the rate to said Southeastern points from the Ohio River, if the hay is not unloaded at a warehouse in East St. Louis, regardless of whether or not the hay is shipped locally to East St. Louis or through billed from the point of origin to the points of final destination, and regardless of provisions in their tariffs concerning through billing; but if the hay is unloaded at a warehouse in East St. Louis, defendants exact for the trans-

portation thereof from East St. Louis to said Southeastern points a rate of 4c per hundred pounds greater than the rate from the Ohio River to said Southeastern points:

And in further finding that the said finding of fact by the said Interstate Commerce Commission, as set forth above, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact by this Court, and in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues in this case; because the Interstate Commerce Commission did not in its Report and Opinion find said facts in substance; because there was no evidence introduced on the trial of this cause to support the same.

Transcript of Record, p. 384.

FIFTY-SECOND.

That said Circuit Court of Appeals erred because it failed to adjudge and decree that said Circuit Court erred in finding in its third special finding of fact that on the hearing of this cause before the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

Complainant operates two warehouses at East St. Louis, and most of the hay it handles it purchases on the track at East St. Louis, unloads, inspects, assorts and reloads at said warehouses, and sells at said Southeastern points, in competition with other hay dealers who do not unload the hay at East St. Louis. In such competition the complainant is therefore prejudiced to the extent of 2c per hundred pounds by defendants' method of applying rates of transportation as aforesaid. Defendants claim this 2c difference in rates is justified by difference in cost to them between the two kinds of transportation services they are called upon to perform; and in further finding that the said finding of fact by the

said Interstate Commerce Commission as above set forth is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court, and in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues involved in this cause; because the Interstate Commerce Commission did not in its Report and Opinion find said facts in substance because there was no evidence introduced on the trial of this case to support the same.

Transcript of Record, pp. 384-385.

FIFTY-THIRD.

That said Circuit Court of Appeals erred because it failed to adjudge and decree that said Circuit Court erred in finding in its fourth special finding of fact that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

At East St. Louis transfers of loaded cars from the northern to the Southern lines and transfers of empty cars from the southern to the northern lines are generally made by a connecting railroad Company, and the charge made by that Company for such service is $4.00 per car when the hay is unloaded as aforesaid, but only $2.00 per car when the hay is not so unloaded, and in each instance this charge is paid by the carrier which hauls the hay south from East St. Louis; and in further finding that the said finding of fact by the said Interstate Commerce Commission as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted at a special finding of fact by this Court, and in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues involved in this case; because the

Interstate Commerce Commission did not in its Report and Opinion find said facts in substance; because there was no evidence introduced on the trial of this cause to support the same.

Transcript of Record, p. 385.

FIFTY-FOURTH.

That said Circuit Court of Appeals erred because it failed to adjudge and decree that said Circuit Court erred in finding in its fifth special finding of fact that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

When the hay is unloaded as aforesaid an empty car must be furnished for the shipment by the carrier which hauls the hay south from East St. Louis, and the service of so furnishing is fairly worth from 40 to 60 cents per car; and in further finding that the said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court, and in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues involved in this cause; because the Interstate Commerce Commission did not, in its Report and Opinion, find said facts in substance; because there was no evidence introduced on the trial of this cause to support the same.

Transcript of Record, p. 385.

FIFTY-FIFTH.

That said Circuit Court of Appeals erred because it failed to adjudge and decree that said Circuit Court erred in finding in its sixth special finding of fact that on the hearing of

this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

The car is in use from 2 to 3 days longer than when the hay is unloaded as aforesaid than when it is not so unloaded, and a fair compensation for such use is 20 cents per day; and in further finding that the said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court, and in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not in its Report and Opinion find said facts in substance, because there is no evidence introduced on the trial of this cause to support the same.

Transcript of Record, p. 386.

FIFTY-SIXTH.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in finding in its seventh special finding of fact that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

When hay is unloaded and reloaded at warehouses as aforesaid the time consumed in doing the work averages from 6 to 8 hours, but the expense of such hauling and reloading is borne entirely by the shipper:

And in further finding that the said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of

fact of this Court, and in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not, in its Report and Opinion, find said facts in substance; because there is no evidence introduced on the trial of this cause, to support the same.

Transcript of Record, p. 386.

FIFTY-SEVENTH.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in finding in its eighth special finding of fact that, on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and opinion in substance the following facts:

Shipments of hay to which the rate of 2c per hundred pounds above the rate from the Ohio River is applied as aforesaid and which are not unloaded at East St. Louis warehouses, are frequently transferred from one car to another in the railroad yards at East St. Louis either because cars in which the hay is shipped to East St. Louis from the north are out of repair, or because the northern lines are not willing to allow their cars to go south from East St. Louis. The expense of such transfer is from $1.25 to $1.50 per car, and this expense is entirely borne by the carrier which hauls the hay south from East St. Louis:

And in further finding that the said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact by this Court, and in ordering that the same be set out in the records of this Court, because the said finding of fact is not material to the issues involved in this case; be-

cause the Interstate Commerce Commission did not, in its Report and Opinion, find said facts in substance; because there was no evidence introduced on the trial of this cause, to support the same.

Transcript of Record, pp. 386-387.

FIFTY-EIGHTH.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in finding in its ninth special finding of fact that, on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

The transfer charge of $4.00 per car above mentioned was formerly $3.00 per car, and the transfer charge of $2.00 per day above mentioned was formerly $1.50 per car; and in further finding that said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court, and in ordering that the same be set out in the record of this Court, because said finding of fact is not material to the issues involved in this case because the Interstate Commerce Commission did not, in its Report and Opinion, find said facts in substance because there was no evidence introduced on the trial of this cause, to support the same.

Transcript of Record, p. 387.

FIFTY-NINTH.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in finding in its tenth special finding of fact that on the hearing of this cause before and by the Interstate Commerce Commission, the

said Commission found in its Report and Opinion in substance the following facts:

The weight of hay in cars shipped as aforesaid from East St. Louis to Southeastern points is from 1,000 to 2,000 pounds greater when the hay is reloaded at East St. Louis warehouses than when it is not so reloaded. This is an advantage in favor of the reconsigned hay:

And in further finding that the said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court and in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not, in its Report and Opinion find said facts in substance; because there was no evidence introduced on the trial of this cause, to support the same.

Transcript of Record, pp. 387-388.

SIXTIETH.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in finding in its eleventh special finding of fact that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

Cars from the north, after being unloaded at warehouses as aforesaid, are frequently reloaded for the south, thus avoiding expense to the southern line of placing an empty car and subtracting perhaps a day from the additional time of the car service: and in further finding that the said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evi-

dence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court, and in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not in its Report and Opinion find said facts in substance; because there was no evidence introduced on the trial of this cause, to support the same.

Transcript of Record, p. 388.

SIXTY-FIRST.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in finding in its twelfth special finding of fact that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

That, taking everything into account, the average additional expense to southern lines in case of reconsigned hay will not exceed that of direct through shipments by more than from $2.00 to $2.50 per car, which is equivalent on the average loading of hay to about one cent per 100 pounds: and in further finding that the said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court, and in ordering that the same be set out in the record of this Court, because said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not, in its Report and Opinion find said facts in substance; because there was no evidence introduced on the trial of this cause, to support the same.

Transcript of Record, p. 388.

SIXTY-SECOND.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in finding in its thirteenth special finding of fact that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

Much of the hay which actually passes through East St. Louis might reach its southern destination via other gateways. Hay grown in different sections also competes via these other gateways in the south with that which does or might pass through East St. Louis. These gateways are Cincinnati, Louisville, Evansville, Cairo, Memphis, Nashville and perhaps others. The testimony showed that at all these points hay could be stopped off, unloaded and treated as the complainant handles its hay at East St. Louis, without the imposition of any charge in addition to the through rate. The testimony showed that these markets all competed with East St. Louis, but the force of that competition did not appear:

And in further finding that the said finding of fact by the Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court, and in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues in this cause; because the Interstate Commerce Commission did not in its Report and Opinion find said facts in substance; because there was no evidence introduced on the trial of this cause, to support same.

Transcript of Record, pp. 388-389.

SIXTY-THIRD.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in finding in its fourteenth special finding of fact that on the hearing of this cause before and by the Interstate Commerce Commission, the said Commission found in its Report and Opinion in substance the following facts:

The complainant actually paid to the Southern Railway Company, on reconsigned shipments of hay, at the rate of 2c per hundred pounds, the difference between the reconsigning rate and the rate on hay not reconsigned, the sum of $3,144.17:

And in further finding that the said finding of fact by the said Interstate Commerce Commission, as above set forth, is supported and justified by the said evidence, and in ordering that the said finding of fact be adopted as a special finding of fact of this Court, and in ordering that the same be set out in the records of this Court, because said finding of fact is not material to the issues involved in this case; because the Interstate Commerce Commission did not, in its Report and Opinion find said facts in substance, and because there was no evidence introduced on the trial of this cause, to support the same.

Transcript of Record, p. 389.

SIXTY-FOURTH.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in rendering judgment in favor of petitioner, St. Louis Hay & Grain Company against Southern Railway Company in the sum of One Thousand Six Hundred Fifty Nine Dollars and Forty One Cents ($1,659.41) and costs and attorneys' fee and in ordering that execution issue against Southern Railway Company for the amount of the said judgment and costs.

Transcript of Record, pp. 389-390.

SIXTY-FIFTH.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in allowing the St. Louis Hay & Grain Company an attorney fee herein in the sum of Three Hundred Fifty Dollars ($350.00), to be collected as part of the costs in this case, because;

1st. The said order and decision of the Court in allowing said attorney fee and ordering that the same be collected as part of the costs in this case is contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States, in this, that it denies to Southern Railway Company, the equal protection of the law.

2nd. It abridges the privileges and immunities of Southern Railway Company being a citizen of the United States.

3d. The provisions of the Act of Congress to regulate commerce which allows an attorney fee to the petitioner in a proceeding of this character is contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States, and is unconstitutional and void.

Transcript of Record, p. 390.

SIXTY-SIXTH.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court made findings and entered a judgment contrary to the evidence in the case.

Transcript of Record, p. 390.

SIXTY-SEVENTH.

That said Circuit Court of Appeals erred because it failed to adjudge that the judgment and findings of the said Circuit Court were contrary to the law in this case.

Transcript of Record, p. 390.

SIXTY-EIGHTH.

That said Circuit Court of Appeals erred because it failed to adjudge that the judgment and findings of said Circuit Court were contrary to law and the evidence in the case.

Transcript of Record, p. 390.

SIXTY-NINTH.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in entering judgment in this case in favor of St. Louis Hay & Grain Company and against Southern Railway Company.

Transcript of Record, p. 390.

SEVENTIETH.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in entering judgment on the general findings of fact in favor of the St. Louis Hay & Grain Company and against Southern Railway Company.

Transcript of Record, pp. 390-391.

SEVENTY-FIRST.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in entering judgment on the special findings of fact in favor of St. Louis Hay & Grain Company and against Southern Railway Company.

Transcript of Record, p. 391.

SEVENTY-SECOND.

That said Circuit Court of Appeals erred because it failed to adjudge that said Circuit Court erred in not finding the issue for the Southern Railway Company and in not enter-

ing a judgment in favor of Southern Railway Company and against St. Louis Hay & Grain Company.

Transcript of Record, p. 391.

SEVENTY-THIRD.

That said Circuit Court of Appeals erred in ruling that parties have no right to request a Federal Court in trying a law case without a jury to find material facts.

Transcript of Record, p. 391.

SEVENTY-FOURTH.

That said Circuit Court of Appeals erred in ruling that parties have no right in a law case submitted to a Judge without a jury, to request the Court to rule on and be governed by certain propositions of law submitted to the Court.

Transcript of Record, p. 391.

SEVENTY-FIFTH.

That said Circuit Court of Appeals erred in holding that "the exaction is in violation of Section 1 as being excessive and thereby produces unjust discrimination and undue disadvantages in violation of Sections 2 and 3" the error in this being that the Circuit Court of Appeals adjudges that a violation of Section 1 of the Act to Regulate Commerce constitutes in and of itself a violation of Sections 2 and 3 of the Act to Regulate Commerce; in other words that unjust discrimination denounced by Section 2 of the Commerce Act and unreasonable preference or advantage denounced by Section 3 of the act are one and the same thing as unreasonable rates denounced by Section 1 of the act.

Transcript of Record, p. 391.

SEVENTY-SIXTH.

That said Circuit Court of Appeals erred because it failed to adjudge that the said Circuit Court erred in not holding that the trial before it was *de novo*, and that the issue of the reasonableness of the rates involved made in the pleadings before the said Circuit Court was a material issue to be passed on in the first instance by the Interstate Commerce Commission, and thereafter by the Circuit Court, and that it was error for this issue of reasonableness to be ignored by both the Commission and the Circuit Court and not to be passed upon by either the Commission or the Circuit Court.

Transcript of Record, p. 391.

BRIEF OF ARGUMENT.

The errors relied upon may be summarized as follows:

I.

The Circuit Court of Appeals Erred in Reference to the Law of Practice.

This question is raised by the 73d and 74th errors assigned and relied upon.

II.

The Circuit Court of Appeals Erred in Its Construction of The Act to Regulate Commerce.

This question is raised by the 75th and 76th errors assigned and relied upon.

III.

The Circuit Court of Appeals erred in not reversing the judgment of the Circuit Court because the Circuit Court erred in admitting improper, incompetent and irrelevant evidence offered on behalf of defendant in error and in overruling motion to exclude such testimony from consideration of the case.

This question is raised by the 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, and 19th errors assigned and relied upon.

IV.

The Circuit Court of Appeals erred in not reversing the judgment of the Circuit Court because the Circuit Court

erred in overruling and denying motion offered by Plaintiff in error at the close of all the evidence to remand the case to the Interstate Commerce Commission.

This question is raised by the 20th error assigned and relied upon.

V.

The Circuit Court of Appeals erred in not reversing the judgment of the Circuit Court because the Circuit Court erred in overruling and denying motion of Plaintiff in error offered at close of all the evidence for the court to find the issues in favor of the plaintiff in error.

This question is raised by the 21st error assigned and relied upon.

VI.

The Circuit Court of Appeals erred in not reversing the judgment of the Circuit Court because the Circuit Court erred in refusing to hold as law the 4th, 7th, 9th and 19th propositions of law offered by plaintiff in error and in modifying propositions of law 6 and 18 offered by plaintiff in error.

This question is raised by the 22d, 23d, 24th, 25th, 26th, and 27th errors assigned and relied upon.

VII.

The Circuit Court of Appeals erred in not reversing the judgment of the Circuit Court because the Circuit Court erred in rejecting and refusing to find the special findings of fact offered by the plaintiff in error and in substituting its own findings of fact.

This question is raised by the 28th, 29th, 30th, 31st, 32d, 33d, 34th, 35th, 36th, 37th, 38th, 39th, 40th, 41st, 42d, 43d, 44th, 45th, 46th, 47th, 48th, 49th, 50th, 51st, 52d, 53d, 54th,

55th, 56th, 57th, 58th, 59th, 60th, 61st, 62d, and 63d errors assigned and relied upon.

VIII.

The Circuit Court of Appeals erred in not reversing the judgment of the Circuit Court because the said judgment of the Circuit Court is contrary to the undisputed and uncontradicted evidence in the case and contrary to the law in the case, and the Circuit Court erred in rendering judgment in favor of defendant in error and against plaintiff in error.

These questions are raised by the 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st and 72d, errors assigned and relied upon.

Issues and Pleadings.

Before discussing the summary of errors just outlined it is proper to call attention to some of the main and vital issues in this case and the pleadings before the Commission and the Circuit Court.

The Circuit Court held that:

> "8. One of the material issues made before the Commission in this case was whether or not the reconsigning rate from East St. Louis to Southeastern points was a reasonable and just rate."
> Transcript of Record, p. 208.

This issue has never been passed upon by the Commission or Circuit Court or the Circuit Court of Appeals, and plaintiff in error feels that great injustice has thereby been done, because this is one of the main and vital issues in the cause.

A shipper is interested in the total charge which he pays. For instance, in this case the St. Louis Hay & Grain Company is interested in having a reasonable rate from East St. Louis to Atlanta on hay. If that rate is 50 cents per 100 pounds, or 10 cents per 100 pounds, the concern of the shipper is whether the 50 cents or the 10 cents is a reasonable charge for transporting 100 pounds of hay from East St. Louis to Atlanta. It matters not whether this charge is made up of so much per car for switching at East St. Louis of so much per hundred pounds for bridge tolls at the Ohio River, of so much per 100 pounds for the expense of passing through tunnels, of so much per 100 pounds for inspection at Chattanooga, if all these items in the aggregate, amount to no more than 50 cents or 10 cents, as the case may be, and 50 cents or 10 cents is reasonable for the entire transportation, the shipper has no just ground for complaint, on the score of reasonableness.

The Commission in this case narrowed its view to an ex-

amination of a part of the total charge and never investigated or directed its attention to the reasonableness of the total charge itself.

The Court did likewise.

It is claimed by defendant in error that Southern Railway Company in its answer before the Commission admitted that the issues simply concerned a part of the total charge.

Southern Railway Company denies that this is a fair construction of the pleadings before the Commission.

As is well known the pleadings and proceedings before the Commission are very informal and they should not, and do not receive the strict construction which applies to suits in court.

However, even if the pleadings before the Commission should be construed according to defendant in error's contention, nevertheless the issues were very plainly stated in the pleadings filed before the Circuit Court and any inadvertence of language used before the Commission should have been overlooked by the court.

The particular paragraph in the petition before the Commission, which defendant in error lays most store by, is Section 3, which reads as follows:

> "III. That defendants have adopted and maintain in force upon their respective lines of railway schedules of rates and charges wherein and whereby it is provided that the charges exacted for transporting hay in carloads over said lines, respectively, from East St. Louis to said southeastern points, shall be 2 cents per 100 pounds in addition to the regular established rates for transporting hay in carloads from Cairo, Illinois, to said southeastern points, when the shipments originate at points on railroads other than those of defendants, and are not reconsigned at East St. Louis, and 4 cents per 100 pounds in addition to such established rates

when the shipments are reconsigned at East St. Louis; that is to say, 2 cents per 100 pounds is exacted in each instance by defendants, respectively, for the privilege of reconsignment at East St. Louis."

Transcript of Record, p. 5.

The latter part of this paragraph is nothing more than a conclusion of law and under the well recognized rule in courts only facts well pleaded are admitted on demurrer and not conclusions of law.

In admitting the allegations of this paragraph Southern Railway simply intended to admit, that its schedules provided certain rates for certain shipments as set forth in paragraph 3 of the petition. This was the only fact well pleaded and could only be ascertained by reference to the schedules or tariffs which being printed documents speak for themselves as to their contents. It did not intend to admit the conclusion of law which forms the closing sentence of paragraph 3, and it should not in contemplation of law be held to admit anything more than the facts well pleaded.

Furthermore the proceedings before the Commission and before the courts to enforce the orders of the Commission under the Act are considered more or less as proceedings in equity, and this court has taken occasion to say with regard to an admission even stronger than the one now in question, that admissions in pleadings should not be technically seized upon by courts to entrap either side.

"Eighth: That the classifications and schedules of rates and charges so announced and promulgated in and by said commodity tariffs and circulars of said commission, or sought so to be, as hereinbefore shown, are unfair, unjust, and unreasonable, and that the same cannot be adopted or put or continued in effect by the defendant company or defendant receiver without serious and irreparable loss to it, and serious and

irreparable injury to and destruction of the property, rights, and interests of your orator and the beneficiaries of its trust as hereinafter more fully set forth; that the rates so charged and announced by said Commission are not compensatory, and are unreasonably low, and the adoption and enforcement thereof would result, as nearly as can be estimated, in a diminution of revenues derived from the operation of said International & Great Northern Railroad, aggregating more than $200,000 per annum, and that the revenues from said railroad, so reduced and diminished, would be inadequate and insufficient to provide for the payment of the interest upon the prior obligations of the defendant railroad company, recited in paragraph 4 hereof, and the interest upon the second mortgage bonds secured by said mortgage to your orator as trustee, after providing for the expenses of operating said lines of railroad and property, and maintaining the same in proper order and good working condition, so that the traffic and business of said road, and of every part thereof shall at all times be conducted with safety to person and property, and with due expedition.

"It may not be just to take this as an allegation of a mere matter of fact, the truthfulness of which is admitted, by the demurrer, and which, as thus admitted, eliminates from consideration all questions as to the true character and effect of the rates, yet it is not to be ignored. There are often in the pleadings general allegations of mixed law and fact, such as of the ownership of property and the like, which standing alone are held to be sufficient to sustain judgments, and decrees, and yet are always regarded as qualified, limited, or even controlled by particular facts stated therein.

"It would not, of course, be tolerable for a court administering equity to seize upon a technicality for the purpose or with the result of entrapping either of the parties before it. Hence, we should hesitate to take the filing of the demurrers to these bills as a direct and explicit admission on the part of the defendants that

the rates established by the Commission are unjust and unreasonable."

Reagan vs. Farmers Loan & Trust Company, 154 U. S., 401. 38 Law Ed., 1024.

If the whole of the petition filed by the defendant in error before the Commission and the whole of the answer filed by Southern Railway Company are considered and not this solitary paragraph 3, by itself apart from the context, it becomes clear that one of the main issues before the Commission was the reasonableness of the reconsigning rate from East St. Louis to the Southeast, that is to say, the total rate, and, as we have already seen, the Circuit Court found, that such was one of the material issues before the Commission. This issue, we repeat, has never been passed upon by the Commission, nor the Circuit Court, nor the Circuit Court of Appeals.

The failure of all these tribunals to pass upon this issue has worked great injustice, which is all the more emphasized when it is recalled that in a case brought by St. Louis Hay & Grain Company, this very defendant in error, and involving the very questions in this case, the Commission in an opinion announced by its Chairman took into consideration the reasonableness of the total reconsigning rate, passed upon the main issue and gave an opinion contrary to that of the Commission in the case now at bar. This case is reported under the name of St. Louis Hay & Grain Company vs. I. C. R. R. *et al* in 11 I. C. Rep., p. 486, and was decided after the present case.

Hence if justice is to be done, the case at bar should undoubtedly be sent back to the Interstate Commerce Commission to have the main issue passed upon and Southern Railway Company should not suffer from an inadvertence in pleading before the Interstate Commerce Commission, even though it could be held that the main issue was not pre-

sented to the Interstate Commerce Commission which Southern Railway Company denies in which denial it has been upheld by the Circuit Court, although that court, like the Commission, failed to pass upon this issue. We will now take up the summary of errors *seriatim.*

I.

The Circuit Court of Appeals Erred in Reference to the Law of Practice.

A

In its opinion the Circuit Court of Appeals says:

> "Of the seventy assignments of error the majority present nothing for our consideration. Many of them are addressed to the refusal of the court to 'hold' certain 'propositions of law' which were submitted to the court in writing by the plaintiff in error as though the court as Judge were required to give instructions to the court as Jury. Streeter vs. Sanitary District, 133 Fed., 124."
>
> Transcript of Record, p. 348.

The error of law here is, that the Circuit Court of Appeals declined to consider certain assignments of error on the authority of Streeter vs. Sanitary District, 133 Fed., 124, whereas this court has ruled precisely the opposite in a number of cases.

In construing Sections 649 and 700 of the Revised Statutes (Sec. 4 of the Act of Congress, March 3, 1865) which provides for the submission of a case for trial by the court without a jury, this court says:

> "If the parties desire a review of the law involved in the case they must either get the court to make a special finding which raises the legal propositions, or they must present to the court their propositions of law and require a ruling on them."
>
> The Springfield Fire and Marine Insurance Company of Massachusetts vs. Sidney W. Sea, 21 Wall., p. 158, 22 Law Ed., 512.

In the case of the Town of Martinton vs. Fairbanks, 112 U. S., 670, the court said:

> "If the parties desire a review of the law involved in the case, they must either get the court to find a special verdict which raises the legal propositions or they must present to the court their propositions of law and require the court to rule on them."
> Town of Martinton vs. Fairbanks, 112 U. S., 670.

The propositions of law which the Circuit Court declined to be governed by were submitted separately and not as a whole in strict accordance with the practice as laid down by the decisions of this court.

It was error on the part of the Circuit Court of Appeals to decline to consider the assignments of error based on the action of the Circuit Court and the case of Streeter vs. Sanitary District, 133 F. R., 124, which the Circuit Court of Appeals relies upon, is in conflict with the decisions of this court.

Furthermore it should be noted that in the Streeter case "the judgment was rendered on a general finding" (133 F. R., 127). *There was a failure to request findings of fact and submit propositions of law in a timely manner. In the case at bar the proper practice was pursued.*

B

The Circuit Court of Appeals in its opinion says:

> "Other assignments are based on the court's declining to entertain certain proposed findings of fact submitted in writing. Parties have no right to require a Federal Court, in hearing a law case without a jury, to make a special finding."
> Transcript of Record, p. 348.

This ruling is in direct conflict with the decisions of this court.

"If the Circuit Court neglect, or refuse, *on request,* to make a finding one way or the other on a question of fact, material to the determination of the cause, when evidence has been adduced on the subject, an exception to such refusal taken in time and properly presented by a bill of exceptions, may be considered here on appeal. So, too, if the court, against remonstrance, finds a material fact which is not supported by any evidence whatever, and exception is taken, a bill of exceptions may be used to bring up for review the ruling in that particular. In the one case *the refusal to find would be equivalent to a ruling that the fact was immaterial;* and in the other that there was some evidence to prove what is found when in truth there was none. Both these are questions of law, and proper subjects for review in an appellate court." (Italics ours.)

The Francis Wright, 105 U. S., 381, 387.

Steam Tug E. A. Packer vs. New Jersey Lighterage Co., 140 U. S., 360, 35 Law. Ed., 456.

"If the court below neglects or refuses to make a finding one way or the other as to the existence of a material fact which has been established by uncontradicted evidence, or if it finds such a fact when not supported by any evidence whatever, and an exception be taken, the question may be brought up for review in that particular. In the one case the refusal to find would be equivalent to finding that the fact was immaterial; and, in the other, that there was some evidence to prove what is found, when in truth there was none. Both of these are questions of law, and proper subjects for review in an appellate court. The Francis Wright, 105 U. S., 381, 387 (26:453). The E. A. Packer, 140 U. S., 360 (35:453)."

John E. Alexander *et al.* vs. John Machen, *et al.*, 147 U. S., 73, 37 Law Ed., 87.

"The circuit court is bound to pass upon and find

every material and ultimate fact necessary to a proper determination of the question of liability, and, *in case of refusal to make such finding*, an exception may be taken thereto, which can be considered by this court upon appeal." (Italics ours.)

Steam Tug E. A. Packer, John Scully, Appt., vs. New Jersey Lighterage Company, 140 U. S., page 360, 35 Law Ed., page 456.

"There is no practice under this statute (Act of March 3, 1865, R. S., 649, 700) which is peculiar to courts of admiralty. The rule is general, that wherever the trial court finds the facts and conclusion of law therefrom, it is bound to find every fact material to its conclusion, and a refusal to do so, if properly excepted to, is a ground for reversal."

The E. A. Packer, 140 U. S., 360, 365.

The facts submitted were ultimate facts and not a mere report of the evidence (92 U. S., 467), and were material to the decision of the case.

The requests for findings of fact were submitted in the proper time and manner. The numerous cases wherein there was failure in this respect are inapplicable.

II.

The Circuit Court of Appeals Erred in Its Construction of the Act to Regulate Commerce.

A.

The Circuit Court of Appeals misconceived the law applicable to this case.

In its opinion the Circuit Court of Appeals said:

> "The finding, in our opinion, supports the conclusion that the exaction is in violation of Section 1, as being excessive, and thereby produces unjust discriminations and undue disadvantages in violation of Sections 2 and 3."
>
> Transcript of Record, p. 349.

This ruling is in direct conflict with that of the Supreme Court of the United States.

> "We agree, however, with the plantiff in its contention that a charge may be perfectly reasonable under Section 1, and yet may create an unjust discrimination or an unreasonable preference under Sections 2 and 3. As was said by Mr. Justice Blackburn in Great Western R. Co. vs. Sutton, L. R., 4, H. L., 226, 239: 'When it is sought to show that the charge is extortionate as being contrary to the statutable obligation to charge equally, it is immaterial whether the charge is reasonable or not; it is enough to show that the company carried for some other person or class of persons at a lower charge during the period throughout which the party complaining was charged more under the like circumstances.'"
>
> The Interstate Commerce Commission vs. The Baltimore & Ohio Railroad Company, 145 U. S., 263; 36 Law Ed., 704.

The Supreme Court of the United States has, in all the long and short haul cases, held that a rate may or may not be in violation of Section 4 of the Act, and yet be reasonable in and of itself.

I. C. C. vs. Alabama Midland R. Co., 168 U. S., 144.
L. & N. R. R. Co. vs. Behlmer, 175 U. S., 648.
E. T. V. & G. Ry. Co. vs. I. C. C., 181 U. S., 1.

In other words Sections 1, 2, 3, and 4 involve separate and distinct ideas, and it is a complete *non sequitur* to hold that because a rate violates Section 1 it must necessarily violate Sections 2, 3, or 4.

Speaking of Sections 1, 2, 3 and 4, this court said:

> "For what we hold is that * * * the purposes of the several sections are different."
> 168 U. S., 166.

It is quite plain that a rate may be unreasonably high and offend against Section 1 of the Act, and yet if the rate is equally applied to every one alike there can be no undue discrimination which is forbidden by Section 2, nor any undue preference or advantage which is forbidden by Section 3, and it may comply strictly with Section 4, the long and short haul clause of the Act.

In the Abilene case, 204 U. S., 426, this court went into an exhaustive analysis of the Act, and amongst other things took pains to show that prior to the passage of the Act there was conflict of opinion as to whether or not the public could have any complaint at all against undue discrimination, its remedy being confined solely to redress against unreasonable rates.

This court in the Abilene Case pointed out that the great feature of the Act was to create a right and remedy for

the protection of the public against undue discrimination, which had theretofore not clearly existed, and this court has frequently characterized that feature of the Act as the "central and controlling purpose of the law" (209 U. S., p. 80).

It is a confusion of ideas to hold that a violation of Section 1 necessarily involves a violation of Sections 2 and 3.

This erroneous construction of the Act to Regulate Commerce on the part of the Circuit Court of Appeals was prejudicial to plaintiff in error, in that it held the rate to be unduly discriminatory and unduly preferential in violation of Sections 2 and 3 of the Commerce Act, solely because it was said to be in violation of Section 1 of the Commerce Act, and this issue has never been passed upon by the Interstate Commerce Commission, whose opinion plaintiff in error is entitled to have in the first instance, in addition to which the conclusion of the Circuit Court of Appeals is a complete *non sequitur*.

B.

The Circuit Court of Appeals likewise misconstrued the Act to Regulate Commerce in not holding that the trial in the Circuit Court was a trial *de novo*.

> "Now, it is well settled that the court is not the mere executioner of the orders of the Commission. The suit in this court is an original and independent proceeding. This court is not confined to a mere examination of the matter as heard by the Commission. It proceeds to hear the complaint *de novo*. On that hearing, the findings of fact are evidence operating to make out a *prima facie* case in favor of the conclusion reached as to the fact of a violation of the Interstate Commerce Act. Kentucky & I. Bridge Co. vs. Louisville & N. R. Co., 37 Fed., 613; Interstate Commerce Commission vs. Atchison, T. & S. F. R. Co., 50 Fed., 295; Interstate Commerce Commission vs. Lehigh Val. R. Co., 49 Fed.,

177; Interstate Commerce Commission vs. Baltimore & O. R. Co., 43 Fed., 43; Interstate Commerce Commission vs. Cincinnati, N. O. & T. P. R. Co., 56 Fed., 926."

Shinkle, Wilson & Kreis Co. vs. L. & N. R. Co., 62 F. R., 690, 693.

This failure on the part of the Circuit Court of Appeals was prejudicial to the plaintiff in error for the reason that the pleadings before the Circuit Court made the main and vital issue in the case clear, whereas the pleadings before the Commission, owing to the informal manner of practice before that body did not make the main and vital issue as clear as it might be or as clear as it probably should have been made, although upon a careful reading of the pleadings before the Commission the main and vital issue was actually made before that body, and the Circuit Court so found.

The Circuit Court committed error prejudicial to plaintiff in error by not treating the case as a trial *de novo* and by not passing upon the main and vital issue presented to the Circuit Court.

The Circuit Court of Appeals erred in not correcting this error of law on the part of the Circuit Court which was prejudicial to the plaintiff in error.

III.

The Circuit Court of Appeals erred in not reversing the judgment of the Circuit Court because the Circuit Court erred in admitting improper, incompetent and irrelevant evidence offered on behalf of defendant in error and in overruling motion to exclude such testimony from consideration of the case.

The improper, incompetent and irrelevant evidence admitted by the Circuit Court may be divided into two classes; first, the admission of the report and opinion of the Com-

mission; second, testimony tending to show discrimination between different localities.

First. Sections 14 and 16 of the Act to Regulate Commerce as amended March 2, 1889, provide that whenever an investigation shall be made by the Interstate Commerce Commission it shall be its duty to make a report in writing in reference thereto which shall include the findings of fact upon which the conclusions of the Commission are based, together with its recommendation as to what reparation, if any, shall be made by the common carrier to any party or parties who may be found to be injured, such findings so made shall thereafter in all judicial proceedings be deemed *prima facie* evidence as to each and every fact found. The Commission did not render such findings of fact in this case so that the same might be introduced as *prima facie* evidence of the facts found.

The courts in passing upon this question have defined what the duties of the Commission are in regard to this matter to entitle their reports and opinions to be introduced as *prima facie* evidence in judicial proceedings.

In Western N. Y. & P. R. R. Co. vs. Penn. Refining Co., Circuit Court of Appeals for the Third Circuit, 137 F. R., 343, 351, the court says:

> "It is fairly to be inferred from the provisions of Sections 14 and 16 that the findings of fact were intended to be so arranged and set forth in the report of the Commission that they could be offered as *prima facie* evidence of 'each and every fact found,' unaccompanied with extraneous, embarrassing or incompetent matter calculated to confuse or mislead. Int. C. C. vs. Louisville & N. R. Co. (C. C.), 73 F. R., 409, 414, 415. While not expressing the opinion that findings of fact even when mixed with incompetent matter should in all cases be excluded, we hold that, if the same be received, the court should clearly separate and distinguish before the jury the findings of fact from

the incompetent matter, and direct that the latter be wholly disregarded."
137 F. R., 343, 351.

In I. C. C. vs. L. & N. R. R., 73 F. R., 409, 410, quoting from the syllabus:

"The fact that the Commission is composed of men of ability and experience, selected with reference to their particular qualifications therefor, and whose entire time is devoted to questions arising under the act gives to its findings and opinion great weight. But in order that the finding and opinion of the Commission shall have the value intended, it should conform to the purpose of Congress in requiring such proceedings. Its opinion or report should show what the issues in the case are, and what facts it finds in regard to such issues.

"It is not sufficient for the report of the Commission to be made up of mere conclusions with respect either to law or fact. It should make suitable reference to the evidence where there is a conflict in the proof, and show how the Commission settles the disputed fact; or if the evidence in regard to any fact is undisputed, it should be so stated by the Commission.

"Where, in a given case, it is the duty of the Commission to receive and take into account evidence of certain facts, its failure to do so is error of law. And so, where an issue of fact is raised before the Commission, its failure to dispose of it is an error of law."
I. C. C. vs. L. & N. R. Co., 73 F. R., 409, 410.

These authorities hold that when a case is presented to the Commission it is the duty of the Commission to find what the issues before it are, to pass upon the issues and find the facts, and in finding the facts to so arrange them and set them forth in their report and opinion so that it may be seen what disputed questions have been settled and so that

the report and opinion of the Commission may be introduced as *prima facie* evidence of the facts found.

The justness and propriety of the rules laid down by the courts in regard to the form in which the Commission's reports should be made in order to entitle the facts found to be *prima facie* evidence, is well illustrated by the case at bar.

The danger of departing from such just requirements is also well illustrated by the case at bar.

Here we have an instance where the Commission has inadvertently failed to pass upon one of the main issues presented to it, all of which would have been avoided by following the rule laid down by the courts.

When it is considered that the rulings and findings of the Commission vitally affect billions of dollars invested in the railways of the United States, and that their rulings and findings in the vast majority of cases must be final, because, as a practical matter, it is almost impossible on account of the intricacy of the questions involved, and the volume of testimony taken, for the courts to assume the burden of a full review, the importance of following the fair and just practice outlined by the decisions above cited can not be overestimated.

It is to be presumed that the Commission itself would desire to conform to a practice which would obviate great and remediless injustice, and which would insure against even an inadvertent injustice on the part of the Commission. It is also to be presumed that the Commission would desire to adopt a practice that would be an aid to the courts in these intricate cases.

The defendant in error upon the trial of this case undertook to make a *prima facie* case by introducing the report and opinion of the Commission.

When this report and opinion was offered in evidence plaintiff in error objected to its introduction as evidence in the case.

First, because the Commission in said opinion did not pass upon the issues presented to it in said cause.

Second, because the issues in said case presented the question of the reasonableness and justness of the reconsigning rate complained of on hay from East St. Louis to Southeastern points which said issue was material and one of the principal issues in said cause and was not passed upon and determined by said Interstate Commerce Commission.

Third, because said report and opinion of said Commission does not find the facts involved in said matter before said Commission as required by Section 16 of the Act to Regulate Commerce.

Fourth, said report and opinion can not be introduced as *prima facie* evidence of any matters involved before said Commission because the facts are not found by the Commission as required by the Act to Regulate Commerce.

Fifth, because said report and opinion fails to show what the issues in the case before the Interstate Commerce Commission were, and what facts the Commission found in regard to such issues and said report and opinion fails to make suitable reference to the evidence adduced before the Interstate Commerce Commission, in regard to any particular question where there was a conflict of evidence showing how the Commission settled any disputed fact; and because said report and opinion fails to state as a fact whether or not there was any undisputed evidence in reference to any of the facts.

Sixth, because said report and opinion of the Commission is wholly irrelevant to the issues made by the pleadings before this court in this case and makes no reference whatever to the main and material issue in this cause, to-wit: the reasonableness and justness of the reconsigning rate from East St. Louis to Southeastern points.

Seventh, because said report and opinion can not be introduced as *prima facie* evidence of any matter involved in this suit.

Page 37 of Transcript of Record.

But the Circuit Court overruled the objection and permitted the report and opinion to be introduced in evidence, to which action exception was duly taken.

By referring to the petition filed before the Interstate Commerce Commission found upon pages 35 and 36 of the printed record, and particularly paragraph V thereof, it will be seen that the principal allegation against plaintiff in error is that it charged an unreasonable and unjust rate at East St. Louis on hay reconsigned to Southeastern points.

By referring to the answer of plaintiff in error filed before the Interstate Commerce Commision, found on pages 25 and 26 of the printed record, and particularly paragraph V thereof, it will be seen that this allegation is denied and the issue squarely presented to the Commission as to whether or not such rate was reasonable and just.

In the eighth proposition of law submitted to the Circuit Court on the trial of this case, the Circuit Court held that the reasonableness and justness of the reconsigning rate was one of the material issues before the Commission. The proposition is as follows:

> "8. That one of the material issues made before the Commission in this case was whether or not the reconsigning rate from East St. Louis to Southeastern points was a reasonable and just rate."

This was held by the Circuit Court.
Page 208 of Transcript of Record.

This issue was not passed upon by the Commission, and the Commission did not find and arrange the facts as required by the Act of Congress to regulate commerce.

By reference to the case of N. Y., N. H. & H. R. R. Co. vs. Thomas C. Platt, and Marsden J. Perry, Receivers of the New York and New England Railroad Company, in the 7th

volume of Interstate Commerce Reports, pages 323 and 326, there will be seen an opinion and report of the Commission, which complies with the Act to Regulate Commerce, and illustrates the manner in which the facts should be found and arranged.

By referring to the answer of Southern Railway Company to the declaration or complaint filed in the Circuit Court for the enforcement of the Commission's order (pages 20 and 24, inclusive, Transcript of Record), it will be seen that the issue as to the reasonableness and justness of the reconsigning rate from East St. Louis to Southeastern points is squarely made, and that the Report and Opinion of the Commission is wholly irrelevant to the issues made by the pleadings before the Circuit Court.

Therefore, we respectfully submit that the Circuit Court erred in admitting the Report and Opinion of the Commission in evidence and that the Circuit Court of Appeals erred in not reversing the judgment of the Circuit Court on these grounds, especially as the trial in the Circuit Court is *de novo*.

K. & I. Bridge Co. vs. L. & N. R. R. Co., 37 F. R., 567, 613-614.
I. C. C. vs. B. & O. R. R. Co., 43 F. R., 43.
I. C. C. vs. L. V. R. R. Co., 49 F. R., 177.
I. C. C. vs. A. T. & S. F. R. R. Co., 50 F. R., 295.
I. C. C. vs. C. N. O. & T. P. Ry., 56 F. R., 926.
Shinkle, Wilson & Kreis Co. vs. L. & N. R. R. Co., 62 F. R., 690.

Second. The Act to Regulate Commerce provides that it shall be unlawful for any common carrier to make or give any undue or unreasonable preference or advantage to any particular locality or to subject any particular locality to any undue or unreasonable prejudice or disadvantage and where such question is presented to the Interstate Commerce Com-

mission, there is no doubt but what it has power to investigate and render findings with reference to same, but no such question was presented to the Commission in this case and the Commission itself in the conclusions of its report and opinion says:

> "The testimony tends to show, as already stated, that at other markets this aditional service is performed without compensation, but that particular feature of the case is not set forth in the complaint and was only brought out upon the final hearing. It is conceivable that upon a full development of that phase of the matter we might reach the conclusion that the imposition of any reconsigning charge was an undue discrimination against East St. Louis, but our present impression is from what appeared as to conditions at these other markets that the defendants may properly charge for the actual additional expense."
>
> Page 41 of Transcript of Record.

It will be seen that the Commission itself did not regard the question of discrimination between different localities as before it, and the pleadings in the court below did not pretend to enlarge upon the issues presented to the Commission. All that the defendant in error asked in its petition filed in the Circuit Court was the enforcement of the order of the Commission. Therefore, no such question was presented on the trial of this case. Yet the Circuit Court permitted a number of witnesses to be interrogated upon the question of whether or not charges were made for reconsigning at Ohio River points, Memphis and Nashville. Plaintiff in error objected to this investigation as follows:

> "We object to any testimony being introduced in this case with reference to reconsignment charges or that no reconsignment charges are made at Cincinnati, Louisville, Evansville, Cairo, Memphis, Nashville, and

other points, because in the original petition filed before the Interstate Commerce Commision no complaint was made of any undue or unreasonable prejudice or disadvantage against East St. Louis, or any person, or undue or unreasonable preference or advantage in favor of the Ohio and Mississippi River gateways and other localities or in favor of any persons therein located; and because the Commission in its report and opinion says that no such issues were raised before the Commission, and no such issues are made by the pleadings in this case in this court; and, therefore, all such testimony is irrelevant; and because it does not appear that similar conditions exist at East St. Louis as exist at these other gateways."

Page 99 of Transcript of Record.

But the Circuit Court overruled the objection.

It was then understood that all testimony bearing upon this subject was objected to and exception taken.

Page 99 of Transcript of Record.

The evidence referred to is set out in the errors relied upon.

There being no such question as discrimination between different localities presented before the Commission or in the Circuit Court below, plaintiff in error did not undertake to introduce evidence bearing upon this question, but on the contrary objected to the introduction of such evidence as heretofore stated.

Defendant in error is mistaken in assuming that it or any one else was charged for a reconsigning privilege at East St. Louis. Such is not the case.

The undisputed evidence shows that during the time in question the local rate from East St. Louis to Southeastern points was five cents per one hundred pounds above the rate from Ohio River points to Southeastern points, and the re-

consigning rate during the said time was only four cents per one hundred pounds above the rate from Ohio River points.

It therefore appears that instead of the reconsigning shipper being charged for the reconsigning privilege at East St. Louis he was allowed a lower rate than the local rate. While during this time the reconsigning shipper at Ohio River points was required to pay the full local rate from Ohio River points to Southeastern points.

For illustration: A shipper at East St. Louis at the local rate was required to pay 29 cents per one hundred pounds from East St. Louis to Atlanta. If he reconsigned at East St. Louis he was only required to pay 28 cents per one hundred pounds from East St. Louis to Atlanta. Shippers at Ohio River points, if they shipped at the local rate were required to pay 24 cents to Atlanta and if they reconsigned were required to pay 24 cents per one hundred pounds. In other words, all shipments from Ohio River points went on the local rate. All the witnesses conversant with this subject testify the same.

We quote from the testimony of Mr. Joseph M. Denyven on pages 97 and 98 of the Transcript of Record:

> "Q. The local rate, as you have stated, from East St. Louis to Atlanta is 29 cents?
>
> A. Well, the present local rate is 27 cents. At the time they refer to it was 29 cents, but the present rate is 27 cents.
>
> Q. Now a man that brings a car of hay in here and reconsigns it can ship it to Atlanta at 28 cents; from East St. Louis to Atlanta, can't he?
>
> A. Yes, sir.
>
> Q. He could, rather, at the time of this complaint?
>
> A. Yes, sir.
>
> Q. He gets the benefit of one cent below the East St. Louis rate proper?
>
> A. Yes, sir.

Q. At Cairo—from Cairo to Atlanta the rate is 22 cents?

A. Yes, sir.

Q. Or what was it?

A. 24 cents it was.

Q. 24 cents at the time of this controversy. When the shipper gets the car, did get it, into Cairo, for the purpose of shipping it to Atlanta, what rate did he pay out of Cairo?

A. He paid the flat rate of 24 cents.

Q. He could not go to anybody, to any railroad in Cairo, and get a reconsigning rate of 23 cents, could he?

A. No, sir.

Q. Or any lower rate than the flat local rate?

A. The flat rate, yes, sir."

Pages 97-98 of Transcript of Record.

We quote also from the testimony of Mr. William J. Edwards, witness of defendant in error at page 169 and page 170 of the Transcript of Record:

"Q. What is the rate from, say from Cairo to Atlanta—what was it at the time of this complaint?

A. 24 cents.

Q. Now a man at Nashville, reconsigning hay there, would he pay 24 cents from the river, by reshipment, reconsigning at Nashville to Atlanta?

A. Yes, sir, he would.

Q. In other words, he would pay the full local rate?

A. He would pay the full Ohio river rate.

Q. Now a man reconsigning at East St. Louis would pay less. What is the local? Isn't the local from East St. Louis to Atlanta 29 cents; wasn't it at the time?

A. I understand that is the published rate.

Q. A man could reconsign at East St. Louis for 28 cents, couldn't he?

A. I understand so, yes, sir.

Q. Less than the ful local rate?

A. Yes, sir.

Q. By Mr. Farrell: Do the rates break at Nashville, in such a way that the rates to and from Nashville are the same as the through rate from the point of origin to final destination?

A. I understand that hay is billed to Nashville at the Ohio river rate and is reconsigned to any points in the southeast on the basis of the through rate from the Ohio River.

Q. By Mr. Northrop: That is the same as the local, though, isn't it?

A. The same."

Pages 169-170 of Transcript of Record.

The admissibility of this testimony was again raised by a motion filed by the plaintiff in error at the close of all the evidence to strike out all the evidence bearing upon the question of discrimination between different localities and eliminate the same from the consideration of this case.

Pages 186-187 of Transcript of Record.

The Circuit Court overruled this motion, to which action the plaintiff in error duly excepted.

The Circuit Court was in error in admitting the evidence and overruling the motion above referred to.

It is quite evident that the Circuit Court was of the opinion that there was some such question involved in the case because he refused to hold the 9th proposition of law submitted by plaintiff in error which was as follows:

> "The petition filed before the Interstate Commerce Commission introduced herein as Petitioner's Exhibit 'A' in this case, does not complain of any undue or unreasonable prejudice or disadvantage to the localities and markets of East St. Louis or St. Louis; nor of any undue or unreasonable preference or advantage to Cincinnati, Louisville, Evansville, Cairo, Memphis, and Nashville, or either or any of them or other localities, and no issue of any undue or unreasonable prejudice or disadvantage against or undue or unreasonable pref-

erence or advantage to in favor of any localities or markets was presented to the Commision in said case for determination. And there is no such issue in this case before this court."

Pages 208-209 of Transcript of Record.

It is further evident that the Circuit Court was of the opinion that there was some such question involved in the case, because it found as its thirteenth finding of fact the following:

"13. Much of the hay which actually passes through East St. Louis might reach its southern destination via other gateways. Hay grown in different sections also competes via these other gateways in the South with that which does or might pass through East St. Louis. These gateways are Cincinnati, Louisville, Evansville, Cairo, Memphis, Nashville, and perhaps others. The testimony showed that at all these points hay could be stopped off, unloaded, and treated as the complainant handles hay at East St. Louis, without the imposition of any charge in addition to the through rate. The testimony showed that these markets all competed with East St. Louis, but the force of that competition did not appear."

Pages 30-31, Transcript of Record.

We submit that the Circuit Court committed reversible error in this regard, and that the Circuit Court of Appeals committed reversible error in affirming the judgment of the Circuit Court.

IV.

The Circuit Court of Appeals erred in not reversing the judgment of the Circuit Court because the Circuit Court erred in overruling and denying motion offered by plaintiff in error at the close of all the evidence to remand the case to the Interstate Commerce Commission.

We have shown that the Commission did not pass upon the issues presented to it, that it wholly neglected to refer to the principal and leading issue before it, that is the reasonableness and justness of the reconsigning rate from East St. Louis to Southeastern points and it did not find and arrange the facts in its report and opinion as required by law.

The plaintiff in error was entitled in the first instance to have the Commission find the facts and pass upon the questions presented to it and in a suit brought to enforce an order of the Commission, if it appears that the Commission did not pass upon the issues presented to it and does not find and arrange the facts as required by law, it is the duty of the court to remand the case to the Commission with an order to pass upon the issues presented to it and arrange and find the facts as required by the Act of Congress to Regulate Commerce.

The Supreme Court of the United States has decided in a number of cases that it is the duty of the court in such case to remand the case to the Commission for further proceedings.

In the case of Texas & Pacific Railway Co. vs. I. C. C., 162 U. S., 197, 238, the court says:

> "If the Circuit Court of Appeals were of opinion that the Commission in making its order had misconceived the extent of its powers, and if the Circuit Court had erred in affirming the validity of an order made under such misconception, the duty of the Circuit Court of Appeals was to reverse the decree, set aside the order, *and remand the cause to the Commission*, in order that it might, if it saw fit, proceed therein according to law. The defendant was entitled to have its defense considered, in the first instance, at least, by the Commission, upon a full consideration of all the circumstances and conditions upon which a legitimate order could be founded. The questions whether certain charges were reasonable or otherwise, whether certain discriminations

were due or undue, were questions of fact, to be passed upon by the Commission in the light of all facts duly alleged and supported by competent evidence, and it did not comport with the true scheme of the statute that the Circuit Court of Appeals should undertake, of its own motion, to find and pass upon such questions of fact, in a case in the position in which the present one was."

162 U. S., 197, 238. (Italics ours.)

In the case of L. & N. R. R. Co. vs. Behlmer, 175 U. S., 648, 675, the court said:

"If, then, we were to undertake the duty of weighing the evidence in this record, we would be called upon, as a matter of original action, to investigate all these serious considerations which were shut out from view by the Commission, and were not weighed by the Circuit Court of Appeals, because both the Commission and the court erroneously construed the statute. But the law attributes *prima facie* effect to the findings of fact made by the Commission, and that body, from the nature of its organization and the duties imposed upon it by the statute, is peculiarly competent to pass upon questions of fact of the character here arising. In Texas & P. R. Co. vs. Interstate Commerce Commission, 162 U. S., 197, 40 L. ed., 940, 5 Inters. Com. Rep., 405, 16 Sup. Ct. Rep., 666, the court found the fact to be that the Commision had failed to consider and give weight to the proof in the record, affecting the question before it, on a mistaken view taken by it of the law, and that on review of the action of the Commission the Circuit Court of Appeals, whilst considering that the legal conclusion of the Commission was wrong, nevertheless proceeded as a matter of original investigation to weigh the testimony and determine the facts flowing from it. The court said (p. 238, L. ed., p. 954, Inters. Com. Rep., p. 441, Sup. Ct. Rep., p. 682):

" 'If the Circuit Court of Appeals was of opin-

ion that the Commission in making its order had misconceived the extent of its powers, and if the Circuit Court had erred in affirming the validity of an order made under such misconception, the duty of the Circuit Court of Appeals was to reverse the decree, set aside the order, and *remand the cause to the Commission*, in order that it might, if it saw fit, proceed therein according to law. The defendant was entitled to have its defense considered, in the first instance at least, by the Commission, upon a full consideration of all the circumstances and conditions upon which a legitimate order could be founded. The questions whether certain charges were reasonable or otherwise, whether certain discriminations were due or undue, were questions of fact to be passed upon by the Commission in the light of all facts duly alleged and supported by competent evidence, and it did not comport with the true scheme of the statute that the Circuit Court of Appeals should undertake, of its own motion, to find and pass upon such questions of fact, in a case in the position in which the present one was.'

"We think these views should be applied in the case now under review. In this case, however, the proceeding to enforce the order of the Commission was initiated by a private individual on behalf of himself and other interested parties not named, and the petitioner in the Circuit Court has died since the argument and submission of the cause in this court. We are of opinion, therefore, that the *decree* of the Circuit Court of Appeals should be *reversed* with costs, that the case be remanded to the Circuit Court with instructions to modify its decree adjudging that the order of the Commission be set aside with costs, by providing that the dismissal be without prejudice to the right of a party in interest to apply to the Commission to be substituted in the original proceeding before the Commission in the stead of the deceased petitioner, and that upon such

substitution the Commission should proceed upon the evidence already introduced before it or upon such evidence and any additional evidence which it might allow to be introduced, to hear and determine the matter of controversy in conformity to law. A decree will be entered accordingly, such entry to be made *nunc pro tunc* as of the date of the submission of the case in this court." (Italics ours.)

175 U. S., 648, 675-676.

In the case of E. T. V. & G. Ry. Co. vs. I. C. C., 181 U. S., 1, 26, the court said:

"Without taking at all into view the legal propositions announced by the Circuit Court of Appeals in its opinion, and conceding, without passing upon such questions, that they were all correctly decided, it is plain that all the premises of fact upon which the propositions of law decided by the Circuit Court of Appeals rest are at variance with the propositions of fact found by the Commission, in so far as that body passed upon the facts. From this it results that to decide the case in the aspect in which it is now presented we would be obliged to go into the whole evidence, as a matter of original impression, in order to determine the complex questions which the case presents. Among those which of necessity would arise for decision would be whether the original agreement fixing rates to the southern territory, made long since and acted on consecutively for years, was of such a nature as to cause those rates to be illegal, although they might be found to be just and reasonable in and of themselves. If not, whether Chattanooga was from its situation properly embraced in the southern territory, and, if not, whether the Louisville & Nashville Railroad had violated the law by exceptionally reducing its rates to Nashville. If it had not, did it follow, because the condition at Nashville gave that city an exceptionally low rate, that Chattanooga was in a position to be entitled, as a matter of right, to as low or a lesser rate?

"To state these issues is at once to demonstrate that their decision as a matter of first impression, properly belonged to the Commission, since upon that body the law has specially imposed the duty of considering them. Whilst the court has in the discharge of its duty been at times constrained to correct erroneous constructions which have been put by the Commission upon the statute it has steadily refused, because of the fact just stated, to assume to exert its original judgment on the facts, where, under the statute, it was entitled, before approaching the facts, to the aid which must necessarily be afforded by the previous enlightened judgment of the Commission upon such subjects. This rule is aptly illustrated by the opinion in Louisville & N R. Co. vs. Behlmer (1900), 175 U. S., 648, 44 L. Ed., 309, 20 Sup. Ct. Rep., 209, in which case, after pointing out the same error of construction adopted and applied by the Commission in the present case, the Court declined to undertake an original investigation of the facts, saying (p. 675, L. ed., p. 319, Sup. Ct. Rep., p. 219):

> "'If then, we were to undertake the duty of weighing the evidence in this record, we would be called upon, as a matter of original action, to investigate all these serious considerations which were shut out from view by the Commission, and were not weighed by the Circuit Court of Appeals, because both the Commission and the court erroneously construed the statute. But the law attributes *prima facie* effect to the findings of fact made by the Commission, and that body, from the nature of its organization and the duties imposed upon it by the statute, is peculiarly competent to pass upon questions of fact of the character here arising. In Texas & P. R. Co. vs. Interstate Commerce Commission, 162 U. S., 197, 40 L. ed., 940, 5 Inters. Com. Rep., 405, 16 Sup. Ct. Rep., 666, the court found the fact to be that the Commission had failed to consider and give weight to the proof in the record, affecting the question before it, on a mistaken view taken by it of the law, and that on review

of the action of the Commission the Circuit Court of Appeals, whilst considering that the legal conclusion of the Commission was wrong, nevertheless proceeded as a matter of original investigation to weigh the testimony and determine the facts flowing from it. The court said (p. 238, L. ed., p. 954, Inters. Com. Rep., p. 441, Sup. Ct. Rep., p. 682):

" 'If the Circuit Court of Appeals was of opinion that the Commission in making its order had misconceived the extent of its powers, and if the Circuit Court has erred in affirming the validity of an order made under such misconception, the duty of the Circuit Court of Appeals was to reverse the decree, set aside the order, and *remand the cause to the Commision* in order that it might, if it saw fit, proceed therein according to law. The defendant was entitled to have its defense considered, in the first instance at least, by the Commission upon a full consideration of all the circumstances and conditions upon which a legitimate order could be founded. The question whether certain charges were reasonable or otherwise, whether certain discriminations were due or undue, were questions of fact, to be passed upon by the Commission in the light of all facts duly alleged and supported by competent evidence; and it did not comport with the true scheme of the statute that the Circuit Court of Appeals should undertake, of its own motion, to find and pass upon such questions of fact in a case in the position in which the present one was.'

" 'We think these views should be applied in the case now under review.'

"The decree of the Circuit Court of Appeals should be reversed, with costs, and the case be remanded to the Circuit Court, with instructions to set aside its decree adjudging that the order of the Commission be enforced, and to dismiss the application made for that

purpose, with costs, the whole to be without prejudice to the right of the Commission to proceed upon the evidence already introduced before it, or upon such further pleadings and evidence as it may allow to be made or introduced, to hear and determine the matter in controversy according to law." (Italics ours.)

181 U. S., 1, 26-29.

See also—

I. C. C. vs. C. B. & Q. R. R., 320, 342.

T. & P. Ry. Co. vs. Abilene Cotton Oil Co., 204 U. S., 426.

It has been uniformly held by the Federal courts that where the Commission has failed to pass upon the issues presented to it or has failed to find and arrange the facts as required by law, it is the duty of the court to remand the case to the Commission for further proceedings.

At the close of all the evidence in this case plaintiff in error presented a motion to the Circuit Court asking that this case be remanded to the Commission and assigned the following reasons for said motion:

"1. Because the issues presented to the Interstate Commerce Commission were not passed upon and determined by said Interstate Commerce Commission.

"2. Because petition filed before the Interstate Commerce Commission by St. Louis Hay and Grain Company in said case, in the fifth paragraph thereof, alleges that the reconsigning rate charged on shipments of hay from East St. Louis to Southeastern points is unreasonable and that by reason thereof the petitioner has been compelled to pay unreasonable and unjust rates for the transportation of hay from East St. Louis to Southeastern points, in violation of Section 1 of the Act of Congress to Regulate Commerce, which said allegation was denied by the defendant in paragraph 5 of its answer filed in said case before the Interstate Commerce Commission, and in addition to said direct denial in same

paragraph 5 of defendant's answer, defendant Southern Railway Company, alleged that the charge for reconsignment of hay from East St. Louis to Southeastern points is in all cases invariably one cent less than the rate from East St. Louis proper to said Southeastern points.

"Said pleadings directly present the issue of the reasonableness and justness of the said reconsigning rate from East St. Louis to said Southeastern points, which said issue was a material issue and was not passed upon by said Interstate Commerce Commission.

"3. Defendant is entitled, as a matter of law, to have the Interstate Commerce Commission in the first instance pass upon all issues presented, and where the Interstate Commerce Commission fails to pass upon material issues presented to it, it is the duty of the Court to refer the matter back to the Interstate Commerce Commission to be proceeded in according to law.

"4. Because said Interstate Commerce Commission did not make a report in writing in said case including findings of fact upon which the conclusions of the Interstate Commerce Commission were based as required by law, but instead thereof filed a report made up of mere conclusions, which report failed to show what the issues in the case were, and what facts the Interstate Commerce Commission found in regard to such issues, and because said report failed to make suitable references to the evidence adduced before the Interstate Commerce Commission in regard to the particular questions and issues presented; and because said report failed to show whether or not there was any conflict in the proof before the Interstate Commerce Commission, and failed to make reference to the testimony taken before it showing how the Interstate Commerce Commission had settled any disputed facts; and because said report failed to state whether or not the evidence in regard to some or any of the issues

was undisputed, that is to say, said report of the Interstate Commerce Commission failed to conform to the requirements of the law."

Pages 188-189 of Transcript of Record.

The court denies this motion.

This motion should have been allowed and it was error to deny the same. There is no question but what the Circuit Court misapprehended the law in this regard because the proposition of law numbered six submitted by plaintiff in error defined the duty of the Circuit Court in this regard.

The proposition as submitted is as follows:

> "Where a petition and complaint is filed before the Interstate Commerce Commission under and by virtue of the Act to Regulate Commerce, and issues are made upon such petition and complaint, it is the duty of the Commission to pass upon each and every material issue made, and if the Commission upon an investigation makes an order for reparation and suit is brought in a Circuit Court of the United States to enforce such order, and it is there made to appear that said Commission did not pass upon each and every material issue made before the Commission, it is the duty of the Circuit Court of the United States to remand the case to the said Commission for further proceedings according to law."
>
> Pages 309-310 of Transcript of Record.

The Circuit Court modified this proposition by striking out the words "to remand the case to the said Commission for further proceedings according to law," and inserting the words "to refuse to enforce the order."

Page 310 of Transcript of Record.

V.

The Circuit Court of Appeals erred in not reversing the judgment of the Circuit Court because the Circuit Court erred in overruling and denying motion of plaintiff in error offered at close of all the evidence for the Court to find the issues in favor of the plaintiff in error.

The Bill of exceptions filed in this case contains all the evidence heard in the Circuit Court below and the Transcript of the Record contains all of the evidence bearing upon the issues in this case.

The undisputed and uncontradicted evidence shows that the reconsigning rate, of which defendant in error complains, was in the nature of a local rate and was applied on all shipments of hay from East St. Louis to Southeastern points where shippers were in possession of expense bills showing that they had paid transportation charges on carload lots of hay shipped into East St. Louis. By the presentation of these expense bills they were entitled to the benefits of the reconsigning rate which was one cent per hundred pounds less than the local rate from East St. Louis to Southeastern points, and in such transactions the carrier deals entirely with the shipper and not with the connecting carrier.

By reference to exhibits Nos. 15, 16, 17, 18, 19, 20 and 21, contained on pages 273 to 279 inclusive of the Transcript of Record, it will be seen how these reconsigned shipments were made.

No. 15 is an expense bill showing that the shipper has paid freight on a car load of hay from Tingley, Iowa, to East St. Louis, Illinois.

No. 16 is authority to bill the goods at the reconsigning rate.

No. 17 is a manifest instructing the agent of plaintiff in error to bill the goods from East St. Louis to Southeastern points.

No. 18 is the bill of lading issued by plaintiff in error to shipper at East St. Louis.

No. 19 is receipt issued to shipper.

No. 20 is way bill, showing rate, etc.

No. 21 is copy of original way bill.

Plaintiff in error introduced a great deal of evidence conclusively showing that this reconsigning rate is reasonable and just. The evidence shows that plaintiff in error and other carriers gave hay the same rate from East St. Louis to Southeastern points that they gave to grain which is greatly to the advantage of the hay shipper. The evidence shows that this rate has been made by open competition and a number of expert witnesses testified that the rate is reasonable and just.

There was no attempt made by defendant in error to controvert this testimony, but it sought to compare this reconsigning rate with the portion of a through rate received by plaintiff in error for its part of the haul on hay originating at points beyond East St. Louis and shipped through East St. Louis to Southeastern points.

In the cases in which it appeared that plaintiff in error had accepted a rate of two cents less than the reconsigning rate, the uncontradicted and undisputed evidence showed it was from other carriers and was a division of a through rate and the entire transaction was had with other carriers and not with the shippers at all.

By reference to Exhibits Nos. 12, 13 and 14, on pages 269 to 273, inclusive, of the Transcript of Record, will be seen the manner in which a through shipment is made.

Exhibit 12 shows a shipment of hay from Ohlman, Illinois, to Gastonia, North Carolina, by the Big Four Railroad. This original way bill is presented by the Big Four Railroad to plaintiff in error at East St. Louis on which plaintiff in error issues a way bill, Exhibit 13, as a connecting carrier from East St. Louis to Gastonia, N. C.

Exhibit No. 14 shows delivery of car in question by the Big Four to plaintiff in error at East St. Louis.

The through rate is shown from Ohlman, Ill., to Gastonia, N. C., and the division of the through rate is shown on Exhibit No. 13.

The courts have repeatedly held that a rate such as the reconsigning rate charged in this case cannot be compared with the division of a through rate for the purpose of determining the reasonableness or justness of the reconsigning rate. And it is not evidence of discrimination if it appears that a carrier has accepted less for its portion of a through haul than the local rate charged by such carrier between the same points.

The Commission itself in the conclusions of its report and opinion says:

> "It is well understood that a through rate may properly be less than the sum of the locals to or from a divisional point. The mere fact, therefore, that these defendants make in connection with northern lines a joint rate on hay from points of production to points of consumption through East St. Louis which is less than the rate into that point added to the rate out, does not establish the illegality of any of the rates involved."
>
> Page 46 of Transcript of Record.

In the case of C. M. & St. P. R. Co. vs. Tompkins, 176 U. S., 167, 178-179, the court says:

> "It is obvious on a little reflection that the cost of moving local freight is greater than that of moving through freight and equally obvious that it is almost if not quite impossible to determine the difference with mathematical accuracy. Take a single line of 100 miles with ten stations. One train starts from one terminus with through freight and goes to the other without stop.

A second train starts with freight for each intermediate station. The mileage is the same. The amount of freight hauled per mile may be the same, but the time taken by the one is greater than that taken by the other. Additional fuel is consumed at each station where there is a stop. The wear and tear of the locomotive and cars from the increased stops and in shifting cars from main to side tracks is greater; there are the wages of the employees at the intermediate stations, the cost of insurance, and these elements are so varying and uncertain that it would seem quite out of reach to make any accurate comparison of the relative cost. And if this is true when there are two separate trains, it is more so when the same train carries both local and through freight. It is impossible to distribute between the two the relative cost of carriage. Yet that there is a difference is manifest, and upon such difference the opinion of experts familiar with railroad business is competent testimony, and can not be disregarded."

Chicago, M. & St. P. R. Co. vs. Tompkins, 176 U. S., 167, 178-179.

In the case of Minneapolis, etc., R. Co. vs. Minnesota, 186 U. S., 257, 262-263, the court says:

"The practice of railways in this country is almost universally to the contrary, and a through tariff is almost always fixed at a less sum than the aggregate of local tariffs between nearby stations on the same road. Doubtless the fixing of a lower through tariff is dictated largely by a desire of each road to get as much mileage as possible from its patrons, as well as by an effort to meet competition over other lines doing business betwen the same termini; but in addition to this there is an increased cost of local business over through business in the additional fuel consumed and the increased wear upon the machinery of each train involved in stopping at every station. These facts were noticed by Mr. Justice Brewer in the opinion of the court in Chicago, M. & St. P. R. Co. vs. Tompkins, 176 U. S.,

167, 44 L. ed., 417, 20 Sup. Ct. Rep., 336, in which he makes the following observations:

> " 'Take a single line of 100 miles, with ten stations. One train starts from one terminus with through freight and goes to the other without stop. A second train starts with freight for each intermediate station. The mileage is the same. The amount of freight hauled per mile may be the same; but the time taken by the one is greater than that taken by the other. Additional fuel is consumed at each station where there is a stop. The wear and tear of the locomotives and cars from the increased stops and in shifting cars from main to side tracks is greater; there are the wages of the employees at the intermediate stations, the cost of insurance, and these elements are so varying and uncertain that it would seem quite out of reach to make any accurate comparison of the relative cost. And if this is true when there are two separate trains, it is more so when the same train carries both local and through freight.' "

186 U. S., 257, 262-263.

On this question we cite the following:

A joint through tariff argeed upon by two connecting lines, or the share of it which either line takes, is not the standard by which to determine whether either line by its local rates grants undue preferences.

Tozer vs. U. S., 52 F. R., 917, 919.

Chicago, etc., Ry. vs. Osborne, 52 F. R., 912, 914.

The fact that a railway company charges a local shipper more for transporting property between two points on its road than it charges for the same services when property transported is received from a connecting railroad and is carried under a joint tariff established by two connecting carriers, is insufficient evidence to establish the charge of an

undue preference or discrimination under the third section of the act.

Parsons vs. Chicago, etc., R. Co., 63 Fed. Rep., 903, 909 (citing Tozer vs. U. S., 52 F. R., 917).

Poughkeepsie Iron Co. vs. N. Y. C. R. Co., 3 I. C. R., 248, 253.

A local rate between two points of the same road is not necessarily unlawful because it is higher than the rate charged under the joint tariff for a much longer haul over a line which is composed in part of that portion of the road to which the local rate applies.

Parsons vs. Chicago, etc., R. Co., 63 F. R., 903, 914 (citing Chicago, etc., R. Co. vs. Osborne, 10 U. S. App., 420, 52 F. R., 912, 53 Am. & Eng. R. Cas., 18, reversing 48 F. R., 49).

Tozer vs. U. S., 52 F. R., 917, 919.

U. S. vs. Mellen, 53 F. R., 229, 232.

The fact that one carrier's proportion of the through rate is lower than its local rate over its own line does not make the through rate unlawful.

Lippman vs. Ill. Cent. R. Co., 2 I. C. R., 414, 415.

Imperial Coal Co. vs. Pittsburg, etc., R. Co., 2 I. C. R., 436, 445.

N. O. Cotton Exchange vs. I. C. R. Co., 2 I. C. R., 777, 786.

In the case of R. R. Comm. of Fla. vs. S. F. & W. Ry. Co., *et al.*, it was held that complainants have no interest in the division of rates between defendants, and that the division accepted by a carrier does not determine what the charge to the public must be.

3 I. C. R., 688, 699.

"That portion of a through rate received by one of the companies party thereto may be less than its local rate is not questioned. The Interstate Commerce Commission, which has filed a brief in this case, and which has criticised some of the views expressed in the opinion of the Court of Appeals in Osborne vs. Chicago & N. W. R. Co., 48 Fed. Rep., 49, concedes this, and also that the judgment in that case was right."

Parsons vs. Chicago & Northwestern Ry., 167 U. S., 447, 457-458.

"When joint rates are made, the shipper has nothing to do with that; he has no control over that. His privilege is to deliver his freight that is to be transported to the railway company, and, if it comes under the operation of a joint rate, it is not a matter of any moment, as between him and the railway company that handles his freight, what particular share or portion of the rate that is actually paid on the shipment any particular railroad received. If two or more railway companies, entering into a joint tariff arrangement, shall so carry it out as to cause a damage to the shipper, as, by way of illustration, charging him under the joint tariff three cents or five cents more than they ought to have charged him, it is not a question in which the shipper is interested, when he sues to recover, to know what particular division may have been made of the five cents thus illegally charged. The shipper would have a right to look to all of the railways, or to any of them, which had aided in commiting the wrong, by receiving from him a larger rate than he ought to have been charged."

Osborne vs. Chicago & N. W. Ry. Co., 48 F. R., 49, 56-57.

"That, where two companies owning connecting lines of road unite in a joint through tariff, they form for the connected roads practically a new and independent line. Neither company is bound to adjust its own local tariff to suit the other, nor compellable to make a joint tariff with it. It may insist upon charging its local rates for all transportation over its line. If, therefore, the two

companies by agreement make a joint tariff over their lines, or any parts of their lines, such joint tariff is not the basis by which the reasonableness of the local tariff of either line is determined. To illustrate: On the defendant's road, the distance from Turner to Chicago is 30 miles; on the Lake Shore line, from Chicago to Cleveland it is two or three hundred miles. The defendant company may charge 15 cents for transporting grain the 30 miles from Turner to Chicago, providing that be in fact only a reasonable charge for the service, although the Lake Shore Company charges no more for transporting it from Chicago to Cleveland; and the fact that the rate on each line is 15 cents for the distance named will not prevent the two companies from making a joint tariff for grain shipped from Turner to Cleveland of 12 cents; less than the local tariff of either. That we may not be misunderstood, we do not mean to intimate that the two companies, with a joint line, can make a tariff from Turner to Cleveland higher than from Turner to Buffalo; or any other intermediate point between Cleveland and Buffalo; for when the two companies, by their joint tariff, make a new and independent line that new and independent line may become subject to the long and short haul clause. But what we mean to decide is that a through tariff on a joint line is not the standard by which the separate tariff of either company is to be measured or condemned."

Chicago & N. W. Ry. Co. vs. Osborne, 52 F. R., 912, 914-915.

If we are right in our contention that the reconsigning rate of which defendant in error complains was reasonable and just and that it can not be compared with the division of the through rate for the purpose of establishing discrimination then there is no evidence in this record upon which a judgment in favor of defendant in error can be based.

Furthermore, if the reconsigning rate from East St. Louis to Southeastern points of four cents above the rate from

Ohio River points to Southeastern points can be compared with the division of a through rate accepted by plaintiff in error for its haul from East St. Louis to Southeastern points on shipments of hay originating beyond East St. Louis and passing through East St. Louis to Southeastern points of two cents per hundred pounds above the rate from Ohio River points to Southeastern points, for the purpose of determining whether or not the reconsigning shipper has been discriminated against, the undisputed and uncontradicted evidence in this case shows that the difference in the cost of service is greater than the difference in the rate charged.

For these reasons the motion submitted to find the issues in favor of the plaintiff in error should have been allowed and it was error to deny the same.

We will call the attention of the court particularly to the evidence above referred to under the eighth summary and ask that it be considered in connection herewith.

VI.

The Circuit Court of Appeals erred in not reversing the judgment of the Circuit Court because the Circuit Court erred in refusing to hold as law the 4th, 7th, 9th and 19th propositions of law offered by plaintiff in error and in modifying propositions of law 6 and 18 offered by plaintiff in error.

The fourth proposition of law offered by the plaintiff in error and refused by the court is as follows:

> "The Report of the Interstate Commerce Commission and its conclusions entitled 'Report and Opinion of the Commission in St. Louis Hay and Grain Company vs. Mobile and Ohio Railroad Company, *et. al.*,' introduced in evidence in this case in this court by petitioner and marked Petitioner's Exhibit 'B' does not contain findings of fact and findings of fact are not so pre-

pared and arranged in said Report as required by law so that said Report can be introduced as evidence in this case."

This proposition was refused by the Circuit Court and due exception taken.

Pages 206-207 of Transcript of Record.

It involves the question as to whether or not the report of the Commission was prepared and arranged in the manner provided by law, and whether or not the report and opinion contains findings of fact as required by law. It involves the same question that we have discussed at some length, relative to the admission of the report and opinion of the Commission in evidence, and relative to the ruling of the Circuit Court upon the motion of the plaintiff in error to exclude from the consideration of the case the report and opinion of said Commission. If our contention is right, that the report and opinion should never have been admitted in evidence, then the fourth proposition of law should have been held as law by the Circuit Court, and it was error for the Circuit Court to refuse the same, and the Circuit Court of Appeals erred in not reversing the judgment of the Circuit Court.

The seventh proposition of law offered by the plaintiff in error and refused by the Circuit Court is as follows:

"That one of the material issues made before the Commission in this case was whether or not the reconsigning rate from East St. Louis to Southeastern points was a reasonable and just rate; that this issue was a material one in this case, and the Commission did not pass upon and determine the same."

The Circuit Court refused to hold as law this proposition and due exception was taken.

Page 208 of Transcript of Record.

This proposition involves the question of the issues before the Commission and states that one of the material issues before the Commission was whether or not the reconsigning rate from East St. Louis to Southeastern points was reasonable and just, and that this issue was not passed upon by the said Commission. We have taken up this question in our argument and have shown that this issue was the principal one raised by the pleadings before the Commission; a careful reading of the report and opinion shows that they did not pass upon this issue when the case was before them.

There is no question but what this was a material issue, rates must be based alone upon the question of reasonableness when, under the law, there is no rate with which they can be compared. A purely local rate can never be compared with the portion which a carrier receives for its part of a through haul, as we have shown above. The only question before the Commission was whether the reconsigning rate on hay from East St. Louis to Southeastern points was reasonable. There was no charge of discrimination between this rate and other rates with which it could be compared, consequently, the question was a material one and the Commission should have passed upon it. Inasmuch, as they did not pass upon it, plaintiff in error was entitled to have the seventh proposition of law, offered by it, held as law applicable to the facts in this case, and it was error for the Circuit Court to refuse it.

The ninth proposition of law offered by the plaintiff in error and refused by the Circuit Court is as follows:

> "The petition filed before the Interstate Commerce Commission introduced herein as Petitioner's Exhibit 'A' in this case, does not complain of any undue or unreasonable prejudice or disadvantage to the localities and markets of East St. Louis or St. Louis; nor of any

undue or unreasonable preference or advantage to Cincinnati, Louisville, Evansville, Cairo, Memphis, and Nashville, or either or any of them or other localities and no issue of any undue or unreasonable prejudice or disadvantage against or undue or unreasonable preference or advantage to in favor of any localities or markets, was presented to the Commission in said case for determination. And there is no such issue in this case before this Court."

The Circuit Court refused to hold as law this proposition and due exception was taken.

Pages 208-209 of Transcript of Record.

This proposition involves the same question that has been argued under the third summary of the Errors Relied Upon, that is, that the Circuit Court erred in permitting evidence to be heard relative to alleged discrimination between East St. Louis and Ohio river points, Memphis and Nashville.

As we have shown in our argument on the admission of such testimony, no such issue was raised before the Commission and we have shown that the Commission so found in its conclusions in its report and opinion, and declined to pass on same.

Pages 15-16 of Transcript of Record.

Under the facts and issues in this case, this proposition of law was a correct one, and it was error for the Circuit Court to refuse it.

The nineteenth proposition of law offered by the plaintiff in error and refused by the court is as follows:

"St. Louis Hay and Grain Company in its petition filed before the Interstate Commerce Commission in this case alleges that the reconsigning rate on hay from East St. Louis to Southeastern points is unreasonable and un-

just. This allegation was denied by the defendant Southern Railway Company in its answer filed before the Interstate Commerce Commission. This issue of reasonableness is again made and raised by the pleadings in this court. On this issue the only question is the reasonableness of the entire charge to the party who is charged. It is not competent for the St. Louis Hay and Grain Company to dissect the accounts of Southern Railway Company, allow this item, disallow that and manipulate the accounts of the railroad in its own way. The reasonableness of the total charge on reconsigned hay from East St. Louis to Southeastern points is the sole question open on this issue, and such items as the alleged extra cost, charge or expense of two cents per 100 pounds for transfer or reconsigning hay at East St. Louis, or such items as the divisions of the total through rate by and between the several carriers forming the through joint line from East St. Louis to Southeastern points, or such items as the one cent bridge toll at Ohio River crossings, are in no wise material to the issue of the reasonableness of the total charge to the shipper for the total service of the transportation of hay reconsigned at East St. Louis for Southeastern points. It is not competent for the shipper to dissect and separate the several services of switching, transferring, side tracking, coupling and uncoupling cars, breaking up cuts of cars, making up trains, ferrying or bridging rivers, etc., at various junctions and other points on the through route. These items or similar items can not be segregated from the whole by the shipper, and in no wise concern him. The only question open to him being the reasonableness of the total rate for the entire service rendered him."

The Circuit Court refused to hold as law this proposition, and due exception was taken.

Pages 211-212 of Transcript of Record.

This proposition involves the question of the methods to

be used in arriving at the reasonableness of the reconsigning rates. It sets forth the theory that the reasonableness of the rate as a whole is the only question that can be determined in settling the question of whether or not the rate is reasonable.

That the methods of comparison named in said proposition of law are not proper in determining the question of such reasonableness. It also sets forth that the different movements in the shipment of such hay can not be divided and dissected, and that it can not be said that too much is charged for any particular movement, but that the rate as a whole from East St. Louis to Southeastern points must be taken in its entirety in considering whether or not it is reasonable.

We submit that this proposition states a correct principle of law. It can easily be imagined that hay can be hauled over certain portions of track cheaper than it can be over others on account of difference in grade, condition of track, and other problems that enter into questions of this character. Yet could it be said that a rate from East St. Louis to Southeastern points that was reasonable for the total haul was unreasonable because the charge for some particular part of the haul might be unreasonable? This proposition of law was presented for the purpose of narrowing the issue in this case to the real issue before the Circuit Court as to whether or not the rate as a whole was reasonable and just. If it was, the defendant in error was not damaged. This proposition of law simplified the issue in the case and removed from the case collateral and foreign matter that had absolutely nothing to do with the real issue in the case.

In the case of Cotting vs. Godard, 183 U. S., page 79, 96-97, the Supreme Court of the United States adopted the following language from the case of Canada Southern R.

Co. vs. International Bridge Co. (L. R., 8 App. Cas., 723, 731):

"It certainly appears to their lordships that the principle must be, when reasonableness comes in question, not what profit it may be reasonable for a company to make, but what it is reasonable to charge to the person who is charged. That is the only thing he is concerned with. They do not say that the case may not be imagined of the results to a company being so enormously disproportionate to the money laid out upon the undertaking as to make that of itself possibly some evidence to the person against whom it is charged. But that is merely imaginary. Here we have got a perfectly reasonable scale of charges in everything which is to be regarded as material to the person against whom the charge is made. One of their lordships asked counsel at the bar to point out which of these charges were unreasonable. It was not found possible to do so. In point of fact, every one of them seems to be, when examined with reference to the service rendered and the benefit to the person receiving that service, perfectly unexceptionable according to any standard of reasonableness which can be suggested. That being so, it seems to their lordships that it would be a very extraordinary thing, indeed, unless the legislature had expressly said so, to hold that the persons using the bridge could claim a right to take the whole accounts of the company, to dissect their capital account, and to dissect their income account, to allow this item and disallow that, and after manipulating the accounts in their own way, to ask a court to say that the persons who have projected such an undertaking as this, who have encountered all the original risks of executing it, who are still subject to the risks which from natural and other causes every such undertaking is subjected to, and who may possibly, as in the case alluded to by the learned judge in the court below, the case of the Tay Bridge, have the whole thing swept away in a moment, are to be regarded as making unreasonable charges, not because it is otherwise than

> fair for the railway company using the bridge to pay those charges, but because the bridge company gets a dividend which is alleged to amount, at the utmost, to 15 per cent. Their lordships can hardly characterize that argument as anything less than preposterous.'"
>
> 183 U. S., 79, 96-97.

We, therefore, submit that the Circuit Court erred in refusing to hold as law the nineteenth proposition of law offered by the plaintiff in error.

The sixth proposition of law offered by plaintiff in error is as follows:

> "Where a petition and complaint is filed before the Interstate Commerce Commission under and by virtue of the Act to Regulate Commerce, and issues are made upon such petition and complaint, it is the duty of the Commission to pass upon each and every material issue made, and if the Commission upon an investigation makes an order for reparation and suit is brought in a Circuit Court of the United States to enforce such order, and it is there made to appear that said Commission did not pass upon each and every material issue made before the Commission, it is the duty of the Circuit Court of the United States, to remand the cause to the said Commission for further proceedings according to law."
>
> Pages 206-207 of Transcript of Record.

The Circuit Court modified this proposition by eliminating the words "to remand the case to said Commision for further proceedings according to law," and inserting in their place the words "to refuse to enforce the order." We have heretofore discussed this error in the summary of the errors assigned and relied upon in which the Circuit Court refused to remand the case to the commission for further action.

It is quite clear that the Circuit Court misapprehended

the law in this regard and it was error to so modify this proposition.

The eighteenth proposition of law offered by the plaintiff in error and modified by the Circuit Court is as follows:

> (As offered) "In determining the reasonableness and justness or unreasonableness or unjustness of a rate the shipper is only concerned in the total charge made and as to whether or not the charge as a whole is reasonable and just. He is not concerned in the various items making up the entire charge and can not inquire into the reasonableness and justness of an item or items making up the entire charge."

The Circuit Court modified the said proposition of law to read as follows:

> "In determining the reasonableness and justness or unreasonableness or unjustness of a rate the shipper is only concerned in the total charge made as to whether or not the charge as a whole is reasonable and just. He is not concerned in the various items making up the entire charge and can not alone and independently inquire into the reasonablenes or unreasonableness of an item or items making up the entire charge."
>
> Pages 210-211 of Transcript of Record.

The change made by the Court was in the last sentence of the proposition in which it added the words "alone and independently" to the sentence "he is not concerned in the various items making up the entire charge and can not inquire into the reasonableness or unreasonableness of an item or items making up the entire charge."

As we have set out in our argument on the nineteenth proposition of law, the defendant in error can not inquire at all into the reasonableness or unreasonableness of any part of the total charge, but the entire charge for the ser-

vices rendered must be taken as a criterion in determining whether or not the rate charged for the total service is reasonable or unreasonable. For this reason the Circuit Court erred in modifying the eighteenth proposition of law offered by the plaintiff in error. The fact that the Circuit Court inserted the words "alone and independently" in the proposition of law submitted by plaintiff in error shows that it did consider separate items making up a total charge in connection with other rates in determining the reasonableness of the reconsigning rate. At least it shows that the Circuit Court was of the opinion that it had the right to consider the separate items for such purpose.

The courts have repeatedly held that a shipper is not interested at all in the division of a through rate, the only matter that concerns him is the reasonableness and justness of the entire rate.

We have, under the summary of errors numbered I, established that the presentation of these propositions of law was in strict accordance with the practice as laid down by the Supreme Court of the United States, and we will not repeat what was set forth in that portion of the brief, but hereby respectfully refer to same as though it were set out in full here.

VII.

The Circuit Court of Appeals erred in not reversing the judgment of the Circuit Court because the Circuit Court erred in rejecting and refusing to find the special findings of fact offered by the plaintiff in error and in substituting its own findings of fact.

The findings of fact submitted by the plaintiff in error will be found on pages 191 to 197, inclusive, of the Transcript of Record.

The findings of fact submitted by the plaintiff in error are based on the undisputed and uncontradicted evidence showing the following:

1. That the rate on hay from Ohio River points to Atlanta was 24 cents per hundred pounds.

2. That the plaintiff in error during said time maintained a local rate on hay from East St. Louis to Southeastern territory of five cents per hundred pounds above the rate from Ohio River points to Southeastern territory; for example, a rate of 29 cents per hundred pounds from East St. Louis to Atlanta.

3. That during said time it maintained a reconsigning rate from East St. Louis to Southeastern territory of four cents per hundred pounds above the charge from Ohio River points to Southeastern territory; for example, the rate of 28 cents per hundred pounds from East St. Louis to Atlanta. That the reconsigning rate so applied in all cases where shippers at East St. Louis presented evidence to plaintiff in error that they had hay in their possession at East St. Louis which had paid already transportation charges from points beyond East St. Louis to East St. Louis. This evidence was furnished by the presentation of a paid expense bill showing that the shipper had paid the freight on a car load of hay into East St. Louis and in the transaction the plaintiff in

error dealt wholly with the shipper and not with any other carrier.

4. That during the time in question it accepted as its portion on through shipments from other carriers on hay originating beyond East St. Louis and shipped through East St. Louis to Southeastern territory a rate of two cents per hundred pounds above the rate from Ohio River points to Southeastern territory; for example, a rate of 26 cents per hundred pounds from East St. Louis to Atlanta. That in such transaction it dealt wholly with the connecting carrier and had no transaction with the shipper.

5. That the rates from Ohio River points to Southeastern territory were reasonable and just.

6. That the reconsigning rate from East St. Louis to Southeastern territory of four cents per hundred above the rate from Ohio River points to Southeastern territory is the result of open competition and is reasonable and just.

7. That the rate of two cents per hundred pounds above the rate from Ohio River points to Southeastern territory is a portion of a through rate accepted by the plaintiff in error from other carriers for its part of a through haul on hay originating beyond East St. Louis and shipped over the lines of other carriers through East St. Louis to Southeastern territory.

8. That if the reconsigning rate from East St. Louis to Southeastern territory can be compared with a portion of a through rate received by plaintiff in error for its part of a through haul on shipments originating beyond East St. Louis and shipped through East St. Louis to Southeastern territory the difference in cost of service rendered by plaintiff in error amounts to more than two cents per hundred pounds.

These findings of fact should have been held by the Circuit Court, but the Circuit Court refused to find the same and substituted fourteen special findings of fact of its own and

in so refusing to find the facts submitted by plaintiff and in adopting its own findings of fact the Circuit Court said:

> "The special findings of fact submitted by the court and recited in its final order and judgment in this cause are considered to include all that is material contained in the proposed findings of fact submitted to the court by the defendant, and said special findings of fact so substituted by the court are considered as containing all that is material or necessary to be found, that is material or necessary to a proper decision of the case, for such reasons the proposed findings of fact, and each of them, submitted by the defendant are rejected."
>
> Page 197 of Transcript of Record.

The findings of fact substituted by the Circuit Court will be found on pages 213-215, inclusive, of the Transcript of Record.

The findings of fact substituted by the Circuit Court are matters gleaned from the report and opinion of the Interstate Commerce Commission, and are a mere syllabus of that report and opinion and are not based upon the evidence introduced and heard in the Circuit Court below; in fact, nearly all the material findings of fact found by the Circuit Court are against the undisputed and uncontradicted evidence in the case.

Inasmuch as the facts submitted are supported by the undisputed and uncontradicted evidence in the case and the findings of fact substituted by the Circuit Court are against the undisputed and uncontradicted evidence in the case, the Circuit Court committed error of law in rejecting the findings of fact submitted by the plaintiff in error.

It is settled law that this is reversible error:

> "If the court below neglects or refuses to make a finding, one way or the other, as to the existence of a

material fact, which has been established by uncontradicted evidence, or if it finds such a fact when not supported by any evidence whatever, and an exception be taken, the question may be brought up for review in that particular. In the one case the refusal to find would be equivalent to finding that the fact was immaterial; and, in the other, that there was some evidence to prove what is found, when in truth there was none. Both of these are questions of law, and proper subjects for review in an appellate court. The Francis Wright, 105 U. S., 381, 387; The E. A. Packer, 140 U. S., 360."

The City of New York, 147 U. S., 72, 77.

"There is no practice under this statute which is peculiar to courts of admiralty. The rule is general, that wherever the trial court finds the facts and the conclusions of law therefrom it is bound to find every fact material to its conclusion, and a refusal to do so, if properly excepted to, is a ground for reversal."

The E. A. Packer, 140 U. S., 360, 365.

We will hereafter in the argument of the eighth summary of the errors relied upon refer to the evidence more at length and we ask that the same may be considered under this branch of our argument.

VIII.

The Circuit Court of Appeals erred in not reversing the judgment of the Circuit Court because the said judgment of the Circuit Court is contrary to the undisputed and uncontradicted evidence in the case and contrary to the law in the case, and the Circuit Court erred in rendering judgment in favor of defendant in error and against plaintiff in error.

The undisputed and uncontradicted evidence in this case fully establishes the following:

1. That during the time in question (June 1, 1903, to February 1, 1905), plaintiff in error maintained a local rate on shipments of hay from East St. Louis to Southeastern points, of five cents per hundred pounds above the rate from Ohio River points to Southeastern points. For example, a rate of 29 cents from East St. Louis to Atlanta.

2. That during the time in question it maintained a reconsigning rate on hay, of four cents per hundred pounds, above the rate from Ohio River points to Southeastern points. For example, a rate of 28 cents from East St. Louis to Atlanta. That in the reconsigned shipments, it dealt wholly with the shipper, and had no transactions with other carriers.

3. That during the time in question, it received as its portion of through shipments of hay originating at points beyond East St. Louis, and shipped through East St. Louis to Southeastern points for its part of a haul from East St. Louis to Southeastern points, a rate of two cents per hundred pounds above the rate from Ohio River points to Southeastern points; for example, a rate of 26 cents from East St. Louis to Atlanta. That, in these transactions, it dealt wholly with the connecting carrier, and had no transactions with the shipper. In other words, in all cases in

which it received a rate of two cents above the rate from Ohio River points to Southeastern points, it was a division of a through rate.

4. That the reconsigning rate of four cents above the rate from Ohio River points to Southeastern points was reasonable and just.

5. It is the contention of plaintiff in error that the reconsigning rate is in the nature of a local rate, and can not be compared with the divisions of a through rate; but, if same are compared, the uncontradicted and undisputed evidence in this case shows that the difference in the service is greater than the difference in the rate charged.

If these matters are maintained by the undisputed and uncontradicted evidence in the case, then the judgment of the Circuit Court below can not be sustained, and the judgment of affirmance by the Circuit Court of Appeals must be reversed.

We desire to call this court's attention to the evidence bearing upon these questions.

Before doing so, however, we will briefly dispose of the contention made by defendant in error in the Circuit Court of Appeals to the effect that the findings of fact requested of the Circuit Court by plaintiff in error were not ultimate facts. With all due respect to the Law Dictionary cited as authority by defendant in error we feel that it is safer to be guided by the rulings of this court as to what constitutes ultimate facts, and our requests for findings of fact were carefully framed in writing and separately presented in accordance with the decisions of this court, and we made a special effort to present what we conceived to be ultimate facts under the rulings of this court.

This court says:

> "If special, the finding must not be a mere report of the evidence, leaving the conclusions of fact to be

adjudged by the appellate tribunal, as that course is forbidden by the repeated decisions of this court. Instead of that, the requirements is that the Circuit Court shall state the ultimate facts, or the propositions of fact, which the evidence establishes, and not the evidence from which those ultimate facts, or propositions of fact, are derived. Such findings are intended by Congress as a proper substitute for the special verdict of a jury; and it is settled law, that it is of the very essence of a special verdict that the jury shall find the facts on which the court is to pronounce the judgment, according to law, that, in order to enable the appellate court to act upon a special verdict, the jury must find the facts, and not merely state the evidence of facts; and the rule is, that when the jury states the evidence merely, without stating the conclusions of the jury, a court of error can not act upon matters so found."

C. R. Tyng, *et al.*, vs. Moses H. Grinnell, 92 U. S., 467, 23 Law Ed., 735.

Our requests for findings of fact will be found on pages 191 to 196, inclusive, of the Transcript of Record.

Upon examination it will be seen that these findings are not "a mere report of the evidence" but are "conclusions of fact" and are "propositions of fact which the evidence establishes." It will be seen that they are "not the evidence from which these ultimate facts, or propositions of fact, are derived."

The Law Dictionary cited by defendant in error says that "the issues are therefore the ultimate facts." This court does not so define or describe "ultimate facts."

At any rate, we made an earnest effort to frame what we believed to be ultimate facts in accordance with the decisions of this court, notwithstanding the views of the Law Dictionaries.

Summary VIII, Continued.

We will now refer to the uncontradicted and undisputed evidence establishing the material ultimate facts which the Circuit Court was requested to find.

First. That during the time in question (June 1, 1903, to February 1, 1905), plaintiff in error maintained a local rate on shipments of hay from East St. Louis to Southeastern points, of five cents per hundred pounds above the rate from Ohio River points to Southeastern points; for example, 29 cents from East St. Louis to Atlanta.

The local rate on hay, from East St. Louis to Atlanta is 29 cents.

Pages 51-52 of Transcript of Record.

This local rate is made by adding five cents to the rate from Ohio River crossings to Atlanta, which latter rate is 24 cents per hundred pounds.

The rate from Ohio River crossings, Cairo, Evansville, Louisville, etc., of 24 cents per hundred pounds is the foundation rate made by the competition of various carriers initial at Ohio River crossings seeking to haul traffic to Southeastern points. To this foundation rate is added five cents from East St. Louis, which makes 29 cents the local rate from East St. Louis to Atlanta.

Pages 58, 59, 60, 61 of Transcript of Record.

This local rate of 29 cents per hundred pounds from East St. Louis to Atlanta, is applied on hay originating at East St. Louis proper.

Page 58 of Transcript of Record.

"The local rate from East St. Louis on hay to the Ohio River is five cents per hundred pounds."

Opinion of Commission. Pages 45-46 of Transcript of Record.

The Commission again recognizes the local rate from East St. Louis to various points in other cases.

> "There is also a local rate from East St. Louis to Memphis of 12 cents, and to Mobile and New Orleans of 20 cents, but as no hay originates at East St. Louis, these local rates are seldom used."
>
> St. Louis Hay and Grain Co. vs. Illinois Central R. Co., 11 I. C. R., 486, 487.

In the case at bar it likewise appears that the local rate of 29 cents from East St. Louis to Atlanta is seldom used.

Page 58 of Transcript of Record.

The local rate is thus established by the undisputed and uncontradicted evidence.

Summary VIII Continued.

Second. That during the time in question it maintained a reconsigning rate on hay of four cents per hundred pounds above the rate from Ohio River points to Southeastern points; for example, a rate of 28 cents from East St. Louis to Atlanta. That in the reconsigned shipments it dealt wholly with the shippers, and had no transactions with other carriers. In making the rate of 28 cents per hundred pounds, the same foundation rate of 24 cents per hundred pounds from Ohio River crossings to Atlanta is used.

Pages 58-59 of Transcript of Record.

The reconsigning rate from East St. Louis to Atlanta was 28 cents per hundred pounds.

Pages 58-59 of Transcript of Record.

This was made by adding four cents per hundred pounds to the rate from Ohio River crossings. The latter rate we have already seen, being 24 cents per hundred pounds from Ohio River crossings to Atlanta, and being the foundation rate.

Pages 59-60 of Transcript of Record.

Pages 255-268, inclusive. Defendant's Exhibit 11.

The four cents used in this instance is a "proportional" or "differential."

Pages 51-53, 65, 66 of Transcript of Record.

A "proportional" rate has very much the characteristics of a local rate, but always indicates a prior movement up to the point at which or from which the "proportional" rate applies, or it contemplates a movement beyond the point to which the proportional rate is said to apply.

Pages 51-52 of Transcript of Record.

The term "proportional" rate has a technical meaning in the transportation trade, and is a term of art.

Pages 52-53 of Transcript of Record.

The courts recognize this fact, and speak of "proportional" rates on grain, said "proportional" rates being similar to the "proportional" rate of 28 cents per hundred pounds now in question before this court.

See Rosenbaum Grain Co. vs. C. R. R.; 130 F. R., 46, *Idem*, 130 F. R., 110.

"Proportional" rates are also well known to the Interstate Commerce Commission.

See 7 I. C. C. R., 240;
9 I. C. C. R., 373.

It will be noted that the "proportional" rate of 28 cents from East St. Louis to Atlanta is one cent less than the "local" rate of 29 cents per hundred pounds. In order to avail himself of the benefit of the reconsigning rate, a shipper at East St. Louis must produce an expense bill showing that the hay has originated at some point in the interior, and has moved by rail into East St. Louis.

Pages 56-58 of Transcript of Record.
Page 67 of Transcript of Record.

In obtaining the reconsigning rate, the shipper deals directly with Southern Railway Company, and must produce an expense bill, whereupon a reconsigning rate slip is issued by the agent of the Southern Railway Company, Mr. S. Frink, and other documents are prepared and issued, such as bills of lading, way bills, etc., illustrations of which are given as exhibits.

Page 73 of Transcript of Record.
Pages 273 to 279, inclusive, of Transcript of Record,
Exhibits 15, 16, 17, 18, 19, 20 and 21.

In this transaction, the shipper deals directly with Southern Railway Company or its agents.

"Reconsignment rates" are recognized by the Interstate Commerce Commission, and are regarded as lawful.

> "This is known as a reconsignment rate and is invariably the same to a given destination without regard to the point of origin, that is, without regard to the local rate paid to East St. Louis."
> 11 I. C. R., 486, 487.

It appears that the undisputed and uncontradicted evidence establishes the fact that plaintiff in error maintains a reconsigning rate on hay of four cents per hundred pounds above the rate from Ohio River points, for example, a rate of 28 cents from East St. Louis to Atlanta, and that in utilizing same, the shipper deals directly with the railway company.

Summary VIII Continued.

Third: During the time in question, plaintiff in error received as its portion of through shipments of hay originating at points beyond East St. Louis, and shipped through East St. Louis to Southeastern points for its part of a haul from East St. Louis to Southeastern points, a rate of two cents per hundred pounds above the rate from Ohio River points to Southeastern points; for example, a rate of 26 cents from East St. Louis to Atlanta. That, in these transactions, it dealt wholly with the connecting carrier, and had no transactions with the shipper. In other words, in all cases in which it received a rate of two cents above the rate from Ohio River points to Southeastern points, it was a "division" of a through rate.

Southern Railway Company does not publish a sheet, or tariff, and distribute it to shippers on connecting lines, showing that the rate from East St. Louis is two cents higher than the rate from Ohio River crossings.

The law does not require "divisions" of through rates to be published. The total charge for transportation is all that concerns the shipper and not the percentages allotted by agreement to one or more of the connecting carriers in a through line, "divisions" being matters of private contract between the companies.

Boston Chamber of Commerce vs. L. S. & M. S. Ry., *et al.*, 1 I. C. R., p. 754.

U. S. vs. A. T. & S. F. Ry., 142 F. R., 176, 192.

Southern Railway Company simply puts itself in position to accept on through business the same revenue that the other lines—the short lines—have already announced they will accept, and, in doing that, Southern Railway Company has to ask other lines to publish instructions as to traffic originating on their lines.

Pages 68-69 of Transcript of Record.

The information as to what divisions other lines—the short lines—will accept, is communicated to Southern Railway Company by lines upon which traffic originates north and west of East St. Louis, and Southern Railway Company is obliged to accept, or, to use the language of the trade, is obliged to "protect" such divisions as its competitors the short lines leading south of East St. Louis will "protect"; otherwise Southern Railway Company could not participate in the business.

Page 55 of Transcript of Record.

There are only three documents connected with a through shipment, and these documents come directly from connecting lines. Illustrations of these documents are filed as Exhibits Nos. 12, 13, 14.

Pages 269-273, inclusive, of Transcript of Record.

By reference to defendants' Exhibits Nos. 12, 13 and 14, pages 269-273, Transcript of Record, which show the billing in case of a through shipment, in connection with the testimony of Mr. Powell on pages 69 to 72, inclusive, Transcript of Record, it will be seen that Exhibit No. 12 shows a shipment of hay by the Big Four from Ohlman, Illinois, to Gastonia, North Carolina. This original waybill is presented by the Big Four Railroad Company to the defendant railway company at East St. Louis, on which it issues the waybill, Exhibit No. 13, as a connecting carrier from East St. Louis to Gastonia, North Carolina. Exhibit No. 14 shows the delivery of the car in question by the Big Four to the defendant at East St. Louis. A through rate, as shown by the original way bill in this case, is 39 cents. The Big Four receives six cents for its haul from Ohlman to East St. Louis. The remainder is divided among the carriers from East St. Louis to final destination, as shown by Exhibit No. 13. In this transaction the Southern Rail-

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way Company has nothing to do with the consignor. Its transactions are confined wholly to other railroads joining in the shipment.

The railways arrange amongst themselves for the handling of through shipments, and they arrange amongst themselves for the division of the through rates connected with through shipments. So far as hay is concerned at East St. Louis, the division of the through rate from East St. Louis to Ohio River points is two cents per hundred pounds. This division of two cents per hundred pounds is arrived at by correspondence and negotiations between various railways. An illustration of the manner in which the division of two cents per hundred pounds is reached, appears on page 55 of Transcript of Record. On said page of the Transcript of Record, is a letter from the Burlington Route to the Agent of Southern Railway Company, in which Southern Railway Company is informed that the Burlington Route has agreed with other lines to "protect" the division of two cents from East St. Louis to the Ohio River. As Southern Railway has a long line from East St. Louis to the Ohio River, it must, necessarily, agree to take the rates and divisions fixed by the short line, if it desires to participate in the business—hence, on being notified that some of its competitors have agreed on a division of two cents per hundred pounds, it has no choice but to accept such division. Whereupon, it concurs in tariffs issued to "protect" such divisions.

All the tariffs filed in this case disclose the fact that whenever two cents per hundred pounds is accepted between East St. Louis and the Ohio River Crossings, it is done as a "division" of a through rate.

It would trespass too much on the time of this Court to reprint here all of said tariffs, but as an illustration, we call attention to Defendant's Exhibit No. 6, pp. 235-244 of Transcript of Record.

Joint Freight Tariff 1450, I. C. C. No. 1422, Cleveland, Cincinnati, Chicago & St. Louis Railway, in connection with Illinois Central Railroad, Louisville & Nashville R. R., Mobile & Ohio Railroad, Southern Railway, and various supplements thereto.

This tariff shows through rate from Pana to Cairo, nine cents.

A note on supplements to this tariff, repeated frequently, reads as follows:

> "Above rates apply only on shipments destined to points south of the States of Kentucky and Virginia, and east of the Illinois Central R. R., Cairo to Jackson, Tenn., and east of the M. & O. R. R., Jackson to Mobile, Ala."

Notations on supplements to this tariff clearly indicate that shipments from points of origin on Big Four, for instance, Pana, Ill., only apply to shipments originating at Pana and going through direct to points of destination in the Southeast, without being stopped off and unloaded and reloaded en route. The rates are given from points of origin to Cairo and Evansville. Division sheet attached to this tariff shows:

"*Divisions*:

"To East St. Louis, Ill.,	*7* cents.
"Beyond	2 cents,"

"Beyond" meaning from East St. Louis to Cairo or Evansville.

Notations on this tariff clearly show two cents is the division of the through rate on through shipments where there is no stopping off, unloading and reloading.

Page 243 of Transcript of Record.

The notations on all of the tariffs introduced in this case conclusively establish the fact that two cents is simply a "division" of a through rate, and that the entire transaction is one wholly between railroad companies.

It was admitted by Mr. Dye, on cross-examination, that in every case where the shipment was treated as a through shipment by Southern Railway Company, a through bill of lading from a northern line was presented.

"Q. You always took a bill of lading to the Southern that purported on its face to be a through bill of lading, didn't you?"

"A. Yes, sir."

Page 160 of Transcript of Record.

He had testified that by payment of $2.00 to a northern line, shipments brought into East St. Louis locally would sometimes be regarded as a through shipment. Upon cross-examination, he was obliged to admit that so far as Southern Railway was concerned, the bill of lading had been previously "corrected" by the northern line, the Southern Railway did not make this "correction."

Page 160 of Transcript of Record.

This fully corroborates the testimony of Mr. Powell, who says that so far as the Southern Railway was concerned, it had no knowledge whatever, of any arrangement with the northern lines by which upon payment to them of $2, a shipment that came into East St. Louis locally could be transformed into a through shipment.

Pages 69, 70 of Transcript of Record.

The Commission likewise finds that the tariffs of defendants provide that the two cent rate should only be applied on through shipments.

"The tariffs of some of, if not all, the defendants contemplate the application of this proportional rate only to shipments which are in fact through billed from the point of origin to destination. If this rule were strictly applied, hay shipped locally to East St. Louis and afterwards sent on, even though not unloaded, should pay a rate of 4 cents above that from the Ohio River."

Page 8 of Transcript of Record.

It thus appears from all the uncontradicted and undisputed evidence that the charge of two cents per 100 pounds from East St. Louis to Ohio River Crossings was in all cases the division of the through rate made with connecting carriers.

This is a most vital and material fact and is crucial and controlling in this case. To emphasize it we therefore repeat (a) that all the witnesses for the railway testified that the two cents was a "division" of the through rate; (b) that all the tariffs introduced show that the two cents was a "division" of the through rate; (c) Mr. Dye, President of St. Louis Hay & Grain Company, defendant in error, testified on cross-examination that the only way that he could get the benefit of this two cents was by presenting a through bill of lading to the southern lines, thus contradicting his direct testimony upon which defendant in error relies; (d) that the Commission itself in its Report and Opinion which was introduced as *prima facie* evidence said that the tariffs contemplate and provide that two cents should be only applied to through shipments.

So we have all the evidence in this entire record concentrating on this point, and unanimously concurring in the fact that the two cents was a "division" of the through rate, and could be only applied to a through shipment.

Hence the findings (Pages 193-194 of Transcript of Record) requested and refused by the Circuit Court are sup-

ported by the uncontradicted and undisputed evidence and the refusal of the Circuit Court to make these findings of fact is reversible error.

> "If the Court below neglects or refuses to make a finding one way or the other as to the existence of a material fact, which has been established by uncontradicted evidence, * * * the question may be brought up for review in that particular."
> The City of New York, 147 U. S., 72, 77.

The question as to whether or not the two cents is a division of a through rate is so important and vital to this case that we will discuss here certain contentions made by defendant in error in its brief before the Circuit Court of Appeals, which contentions will probably be pressed before this Court.

In the first place defendant in error took the position that the tariffs could not be considered as evidence in this case because they were introduced "subject to objection" in the Circuit Court, the ground of the objection being that it had not been established that the tariffs were on file with the Interstate Commerce Commission.

Secondly, because defendant in error asserts that said tariffs contradicted the admissions made in the answer of Southern Railway Company, filed before the Commission.

Third, because it is incredible that Southern Railway Company without its knowledge would have given the benefit of the two cents through rate to shipments which had come in on a local bill of lading to East St. Louis over northern lines.

As to the first position of defendant in error.

Same is untenable for many reasons.

Defendant in error made no exception to the ruling of the Circuit Court permitting these tariffs to be introduced.

It is true that they were introduced "subject to objection" but this does not conform to the practice of the Federal Courts as laid down in innumerable cases and all the appellate Federal Courts have uniformly declined to consider objections to the introduction of testimony unless a formal ruling has been had and exception taken, the grounds of the exception being distinctly set out, and preserved on the Record.

Again, counsel for defendant in error cross-examined with regard to these tariffs (page 146 of Transcript of Record) which, under the practice of the Federal Courts would have waived any exception had it been properly taken, which is not the case.

Again, defendant in error argues that plaintiff in error must show that the tariffs were on file with the Interstate Commerce Commission in accordance with the sixth section of the Act to Regulate Commerce, before same can be properly introduced in evidence. The Circuit Court was not asked to make any ruling on this point nor was any exception taken.

Again, all of the tariffs except one showed the I. C. C. number (page 63 of the Transcript of Record, pages 225-270 of the Transcript of Record) from which it will be conclusively inferred that the tariffs were properly filed with the Commission.

Again, in the Report and Opinion of the Commission introduced by defendant in error, the Commission itself states that "the tariffs of some of, if not all, the defendants contemplate the application of this proportional rate only to shipments which are in fact through billed from point of origin to destination (page 8 of Transcript of Record.)

The Commission itself speaks of and alludes to these tariffs.

This conclusively shows that the tariffs were on file with the Commission and that fact is established by the evidence introduced by defendant in error, to wit, the Report and Opinion of the Commission.

Again, in its petition before the Commission, defendant in error complains because the railways "have adopted and maintained in force upon their respective lines of railway schedules of rates and charges wherein and whereby it is provided that the charges exacted for transporting hay in carloads over said lines, respectively, from East St. Louis to said southeastern points, shall be two cents per 100 pounds in addition to the regular established rates, etc." (Page 5 of Transcript of Record.)

The burden of introducing the tariffs in order to prove its case was therefore upon the defendant in error and not upon the plaintiff in error.

Again, the whole controversy being over what was contained in the tariffs, the tariffs themselves being documentary, are the best and only evidence.

Again, the position of defendant in error is a technicality with which the Courts will have no patience.

As to the second position of defendant in error.

This brings up once more the oft repeated claim that certain damaging admissions were made by Southern Railway Company with regard to paragraph III of defendant in error's petition before the Interstate Commerce Commission.

We have discussed this matter in Section I of this brief but take occasion to set forth said paragraph III of defendant in error here:

> "III. That defendants have adopted and maintain in force upon their respective lines of railway schedules of rates and charges wherein and whereby it is provided that the charges exacted for transporting hay in

carloads over said lines, respectively, from East St. Louis to said southeastern points, shall be 2 cents per 100 pounds in addition to the regular established rates for transporting hay in carloads from Cairo, Illinois, to said southeastern points, when the shipments originate at points on railroads other than those of defendants and are not reconsigned at East St. Louis, and 4 cents per 100 pounds in addition to such established rates when the shipments are reconsigned at East St. Louis; that is to say, 2 cents per 100 pounds is exacted in each instance by defendants, respectively, for the privilege of reconsignment at East St. Louis."

Page 5 of Transcript of Record.

It is true that Southern Railway admitted the allegations contained in this paragraph. It is also true that if the entire answer be taken into consideration as well as the entire petition it will be seen that the main issue in this case is made clear.

It is also true that in its answer before the Circuit Court Southern Railway Company with considerable elaboration made clear the main issue.

Furthermore, we desire to once more call attention to the phraseology of Section III of defendant in error's petition. It cannot be too strongly emphasized that this Section III, upon which defendant in error lays so much store amounts to nothing more than an allegation that the railways have maintained certain schedules of rates and charges about which defendant in error complains.

No person or tribunal could tell what these rates and charges were without an examination of the schedules complained of.

Indeed this entire paragraph III alleges but one fact, that is to say that there are certain schedules of rates in existence and that as to these schedules defendant in error complains.

The schedules or tariffs themselves speak as to their own contents and must be referred to. Indeed in order to prove its case defendant in error had to introduce and did introduce these very schedules before the Commission. Upon inspection of the schedules the Commission found that the 2 cents could only be properly applied to a through shipment. That is to say defendant in error's proof introduced before the Commission contradicted the conclusions of law in paragraph III of its petition.

The answer of Southern Railway Company simply admits the facts well pleaded in paragraph III, and the only fact well pleaded is that Southern Railway maintained certain schedules which were complained of by defendant in error.

This fact Southern Railway Company not only admits but asserts and insists upon, and in order to clearly show what its schedules contain it has introduced its schedules and tariffs before the Circuit Court.

If there is any contradiction involved, the contradiction goes to the allegations of the defendant in error's petition.

In other words the allegations set forth in paragraph III of the petition are not sustained by its proof, and the proof does not support the conclusions of law contained in paragraph III of defendant in error's petition before the Commission.

These conclusions of law were never admitted by Southern Railway nor does its answer carry any such admission.

There is, therefore, nothing in the idea that by the introduction of its tariffs Southern Railway Company has involved itself in any contradictory or inconsistent attitude.

Now as to the third position of defendant in error.

Defendant in error argued in the Circuit Court of Appeals that it is beyond the point of belief that for a period of nine years from 1894 to June 1, 1903, Southern Railway

Company could have been deceived into granting the benefit of the two cent through rate on shipments which had come into East St. Louis over northern lines on a local bill of lading and that it must have knowingly permitted the practice.

There are many troubles with this argument.

One is that Southern Railway did not reach East St. Louis until 1901 (page 92 of Transcript of Record) and only two years instead of nine intervened between 1901 and 1903.

Another is that Mr. Dye, the President of the St. Louis Hay & Grain Company, was forced to admit on cross-examination that he always took a bill of lading to Southern Railway Company which purported on its face to be a through bill of lading.

> "Q. You always took a bill of lading to the Southern that purported on its face to be a through bill of lading, didn't you?
> A. Yes, sir."
> Page 160 of Transcript of Record.

Mr. Dye calls this a "corrected" bill of lading. He further stated that the bill of lading was "corrected" by the northern line.

> "Q. Where did you have that corrected; by whom?
> "A. By the northern line."
> Page 160 of Transcript of Record.

By this testimony Mr. Dye contradicted his direct examination and admitted that he was manipulating the rate at East St. Louis.

There was nothing which would convey the knowledge to Southern Railway that the rates were being manipulated, for the papers presented to Southern Railway were

all regular on their face, and showed a through bill issued by a connecting line.

We thus have a most curious case. Here is a shipper who confessedly manipulates rates in such a manner as to practically receive a rebate, who confessedly avows that he failed to observe the published tariff, violated the Elkins Act and the Act to Regulate Commerce, perpetrated a deception on Southern Railway Company, and instead of being prosecuted he is awarded reparation by the Interstate Commerce Commission and the courts.

Another trouble with this argument of defendant in error is that Mr. Powell, Vice President of Southern Railway, an unimpeached witness, testifies that Southern Railway had no knowledge of this manipulation.

Pages 70-71 of Transcript of Record.

> "It is no more competent for a magistrate than it is for a jury to disregard the positive and uncontradicted evidence of unimpeached witnesses."
>
> Head notes Cook vs. Sanders, 15 Rich. Law, 63.

> "Though juries are judges of the credibility of witnesses, yet where positive and direct testimony is undisputed and uncontradicted, and no improbability or inconsistency is apparent in it or disclosed by other facts or circumstances and the witness is not impeached or discredited, such testimony must be believed and a verdict contrary to it should be set aside."
>
> Boe vs. Lynch, 49 Pac., 381.

In the present instance not only is Mr. Powell's testimony undisputed and uncontradicted, not only is there an absence of improbability and inconsistency but Mr. Dye, President of defendant in error, corroborates Mr. Powell.

Another trouble with this argument of defendant in error is that the Commission itself in another case brought

by this defendant in error in speaking of these very practices in East St. Louis, through Chairman Knapp, says:

> "The complainant lays much stress upon the alleged fact that the reconsignment rate has been frequently accepted on through shipments from points where there are no through rates to Memphis. This appears to have occurred in some cases, and perhaps in quite a number of cases. It ought not to have happened at all. Such an application of the reconsignment rate was clearly unwarranted and illegal. In the absence of a through rate each road participating in the carriage of a through shipment is bound to charge its local rate, since in such case the lawful through rate is the sum of the local rates. The defendants concede this fully, asserting at the same time that any such use of the reconsignment rate was the ignorant or negligent act of subordinates, which was wholly without the sanction or knowledge of their superiors, and that it would not thereafter be permitted. We see no reason to doubt the truthfulness of this declaration, and therefore assume that the lawful rate is now always applied."
>
> St. Louis Hay & Grain Co. vs. I. C. R. R., et al., 11 I. C. Rep., 486, 490-491.

Inasmuch as all the evidence in this record is at one on this point there is nothing for an appellate Court to balance unless it be the alleged finding of Commissioner Prouty which reads as follows:

> "The tariffs of some of, if not all, the defendants contemplate the application of this proportional rate (2 cents) only to shipments which are in fact through billed from the point of origin to destination. If this rule were strictly applied, hay shipped locally to East St. Louis and afterwards sent on, even though not unloaded, should pay a rate of 4 cents above that from the Ohio River. This, however, is not the practical interpretation which the carriers themselves have put

upon these tariffs. In point of fact, if a carload of hay is consigned to East St. Louis locally upon the local rate, and the consignee of that carload determines upon its arrival in East St. Louis to send it directly forward, he may do so by paying to the line which brings it into St. Louis what is called a reconsigning charge of $2 per car. This line upon receiving directions from the consignee will deliver the car to the proper southern line, which receives it and carries it on as a through shipment. The southern lines actually know that carloads of hay received by them at the so-called through proportional rate have been shipped into St. Louis upon the local rate."

Page 8 of Transcript of Record.

From the opening sentence of this alleged finding it will be noted that it applies only to "some of, if not all, the defendants." This so-called finding is therefore too indefinite to include Southern Railway against the positive and uncontradicted testimony of its Vice-President, Mr. Powell, corroborated by Mr. Dye.

The testimony of Mr. Powell is not contradictory of, but is consistent with, the alleged finding which in terms does not cover "all" but only "some" of the railways involved.

Whatever *prima facie* value this finding may have is destroyed by the testimony of defendant in error's President, Mr. Dye.

This so-called finding of fact well illustrates the difficulty with all the alleged findings by the Commission, that is to say it is too indefinite and uncertain to be of any value.

It needs no argument to show that a party by his own testimony can destroy a *prima facie* case which he may have made, and this is what Mr. Dye has done.

Of course if it be held that the Report and Opinion of the Commission was improperly introduced in evidence over the objection and exception of plaintiff in error duly taken, there would not be even a *prima facie* showing on this point.

The foregoing analysis of all the evidence shows that the finding of fact by the Circuit Court numbered two, which will be found on page 29 of the Transcript of Record, and which deals with the subjects we have just been discussing, is contrary to all the uncontradicted and undisputed evidence and constitutes reversible error.

The uncontradicted and undisputed evidence shows, therefore, that we have from East St. Louis to Atlanta a local rate of 29 cents.

A reconsigning rate of 28 cents per hundred pounds.

And a division of through rate of 26 cents per hundred pounds.

Summary VIII Continued.

It has been decided by the Interstate Commerce Commission that it is perfectly lawful to maintain a local rate, a reconsigning rate, a through rate and varying divisions of a through rate between the same points of origin and destination.

This was determined in the case of St. Louis Hay and Grain Company vs. Illinois Central R. R. Co., *et al.*, 11 I. C. R., pp. 486, 487.

In that case the Commission says:

> "The hay in question comes in the first instance to East St. Louis, where a considerable part of it is sold for local use or for re-shipment. In some instances, or from some points of origin, there are through rates to southern destinations which are divided between the lines north and the lines south of East St. Louis, as they may agree. More frequently, however, it appears that no through rates are provided, but the hay comes to East St. Louis on a local rate to that point, and, if carried beyond, takes the rate applicable in such cases. This is known as a reconsignment rate and is invariably the same to a given destination without regard to the point of origin, that is, without regard to the local rate paid to East St. Louis. The reconsignument rate to Memphis is ten cents in all cases, and to Mobile and New Orleans 17½ cents. These respective rates apply to all 'common point' territory.
>
> "There is a local rate from East St. Louis to Memphis of 12 cents, and to Mobile and New Orleans of 20 cents, but as no hay originates at East St. Louis, these local rates are seldom used.
>
> "Now, complainant asserts that on through shipments from points of origin to Memphis the carriers south of East St. Louis get ten cents as their proportion of the through rate, which is exactly the same as their reconsignment rate, whereas on through shipments to Mobile and New Orleans the carriers south of East St. Louis accept 16 cents as their proportion of the through

rate, while maintaining a reconsignment rate of 17½ cents to those points."

11 I. C. R., pp. 486, 487-488.

At page 489, the Commission says:

"It appears from this testimony that the maximum proportion of through rates to Memphis received by the Illinois Central is 10.3 cents, the minimum 7 cents. Its maximum proportion of through rates to New Orleans is 18.1 cents, its minimum 15 cents. The average proportion of the Memphis rate received by that company was stated to be 8.6 cents; and of the New Orleans rate 16.5 cents. Analysis of the divisions received by the Mobile & Ohio would show, as we understand, substantially the same figures."

11 I. C. R., 489.

The conclusion of the Commission is given as follows:

"The fact that the through rates are less than the sum of in and out rates is not of itself a valid ground of objection. * * * Nor is it unlawful for the defendants to maintain reconsignment rates which are higher in some cases than their proportions of through rates. The service of the carriers in handling reconsigned hay is more expensive as a general rule, if not invariably, than the service performed in cases of through shipment, while the reconsignment privileges in question must be of substantial value to the dealers at East St. Louis."

11 I. C. R., pp. 493-494.

The above case is conclusive of the case at bar, and establishes the fact that it is perfectly proper to maintain local rates, reconsignment rates, and divisions of through rates. The latter seem to vary to such an extent as to be greater in some instances than the reconsignment rate. The Commission in effect holds that these rates cannot be compared, and

that neither throws any light upon the other, as far as reasonableness or discrimination is concerned. This result is due to the fact that the Commission in the case last above cited considered the rates as a whole, as the law requires, and did not confine itself to the examination of some particular item constituting a portion of the entire service in a haul of hundreds of miles, such as expense of switching at East St. Louis. The case last above cited is not the first in which the Commission has laid down the rule that it is perfectly lawful, and in the highest interest of commerce, to maintain and publish different rates between the same points.

In the case of Edward Kemble vs. B. & A. R. R. Co., 8 I. C. R., 110, the Commission held that there was no undue discrimination in maintaining a rate of two cents per hundred pounds higher on grain from Chicago to Boston, when said grain was for domestic consumption, than when said grain was for export.

8 I. C. R., 110.

In the Matter of Export and Domestic Rates, 8 I. C. R., 214, the Commission held that there was no undue discrimination in maintaining a rate of 17 cents, from Chicago to New York for domestic consumption; while at the same time, the rate from Chicago to New York on grain for export was 12 cents per hundred pounds.

8 I. C. R., 214.

In this case the Commission also sustained three separate and distinct rates between Kansas City and New Orleans, holding that there was no undue discrimination in maintaining these different rates. Wheat sent from Kansas City to New Orleans for domestic consumption was charged 27 cents per hundred pounds. Wheat originating at Kansas City and sent to New Orleans for export was charged 21 cents per hundred pounds. Wheat received from a connec-

tion at Kansas City and proceeding on to New Orleans for export was charged 10 cents per hundred pounds.

See elaborate opinion of the Interstate Commerce Commission *in re* Export and Domestic Rates, 8 I. C. R., 214.

It is hard to see how the Commission could do otherwise, in view of the law as laid down, by all the decisions of the courts, for we will see that no rates or divisions can be compared with each other, unless they are made under similar circumstances and conditions and that they can not be used by mere comparison to establish reasonableness or undue discrimination without showing that they are made under similar circumstances and conditions.

In his brief filed before the Circuit Court of Appeals counsel for defendant in error cited the case of Wight vs. United States, 167 U. S., 512, as authority for the proposition that only two rates could be maintained between two points.

If he is correct in his construction of the Wight case the Interstate Commerce Commission is wrong in all its rulings to the contrary, and thousands of rates now maintained throughout the country under the sanction of the Interstate Commerce Commission are wrong.

The Wight case, however, does not lay down any such absurdity. In the Wight case the facts are that the Baltimore & Ohio Railroad Company gave a rebate of 3½ cents to a wholesale dealer in beer named Bruening located in the City of Pittsburg.

Bruening's Warehouse was on the tracks of a railroad company which was the rival of the Baltimore & Ohio Railroad Company and he could get beer from Cincinnati and have it switched right into his warehouse by the other line. The rate on beer from Cincinnati to Pittsburg was 15 cents and in order to secure some of Bruening's trade the Balti-

more & Ohio Railroad Company, which did not have a switch track reaching Bruening's warehouse, agreed to pay him 3½ cents per 100 pounds for carting the beer to his warehouse from its depot.

This would have been all right if the Baltimore & Ohio Railroad Company had treated every other wholesale dealer in beer located at Pittsburg in the same way and had published this allowance in its tariffs, and had paid cartage for everybody located in Pittsburg who was in the wholesale beer business.

On the contrary, however, there was a person in Pittsburg named Henry Wolf, who was in the same business as Bruening, that is a wholesale dealer in beer who was unfortunate enough to have a warehouse not located on any railroad at all and the Baltimore & Ohio Railroad Company charged him the full 15 cents rate from Cincinnati to Pittsburg, and gave him no rebate at all for cartage.

In this situation the Supreme Court of the United States held that an undue discrimination was practiced against Wolf and undue preference given to Bruening, and under Section 2 of the Act held that competition could not be considered to permit this.

There was no discussion at all as to whether or not two or more rates could be maintained between two points each rate equally open to everybody under the same circumstances.

The Wight case has no more bearing on the present point than the rule in Shelley's case.

Summary VIII Continued.

Fourth: The reconsigning rate of four cents above the rate from Ohio River points to Southeastern points was reasonable and just. Throughout this argument we have used, as an example, the reconsigning rate of 28 cents per hundred pounds from East St. Louis to Atlanta, as fairly representing the situation. The proposition to be discussed here, therefore, is that the reconsigning rate of 28 cents per hundred pounds, on hay, from East St. Louis to Atlanta is a reasonable and just rate.

We will first state the law, bearing upon the proper tests or standards by which to determine the reasonableness of a rate, after which we will discuss the undisputed and uncontradicted evidence in this case, showing the reconsigning rate to be reasonable and just.

The Supreme Court of the United States has said:

> "The reasonableness of the rate, in a given case, depends on the facts * * *."
> C. N. O. & T. P. R. Co. vs. I. C. C., 162 U. S., 184, 196.

The courts have laid it down that the main test of a reasonable rate, or the main facts which determine the reasonableness of a rate, consist, first, comparison of rates made under similar circumstances and condition; second, competition; third, the opinion of experts. There are other facts, but, under the authorities these are the principal tests of the reasonableness of a rate.

Speaking of the weight to be given to comparison of rates, the Supreme Court in Cotting vs. Godard, 183 U. S., 79, 97-98, uses the following language:

> "It may be said that the conclusion of the Court was directly against the plaintiffs, and therefore was a decision against all their contentions. It was found,

however, that the charges made by the defendant were no greater (and in many instances, less) than those of any other stock yards in the country. Nothing is stated to outweigh the significance of that finding. While custom is not controlling, for there may be a custom on the part of all stock yard companies to make excessive charges, yet in the absence of testimony to the contrary a customary charge should be regarded as reasonable and rightful. In Gunning, Law of Tolls, the author says (p. 61): 'Long usage and acquiescence in one uniform payment for toll is undoubtedly cogent evidence that it is reasonable.' In Shephard vs. Payne, 12 C. B. N. S., 414, 433, Willes, J., said:

> " 'A fee need not be of a fixed and ascertained, but may be of a reasonable amount; and, exercising the power conferred upon us by the case, to draw inferences of fact, we may conclude that, if the claim can be sustained in point of law, it was in fact for a reasonable fee. If so, then, looking to the amount established for similar services by other officers, and remembering what fees have been paid and received within the memory of us all in the Courts of Westminster Hall and at the Assizes, we think there can be little doubt that the fees in question, so far as amount is concerned, are in fact reasonable.'

"In Louisville, E. & St. L. Co. vs. Wilson, 119 Ind., 352, 358, 4 L. R. A., 244, 21 N. E., 341, 343, in this language:

> " 'The law makes it the duty of every common carrier to receive and carry all goods * * * and authorizes a reasonable reward to be charged for the service. The amount to be paid is, in a measure, subject to the agreement of the parties; but when the amount is not fixed by contract, the law implies that the carrier shall have a reasonable reward, which is to be ascertained by the

amount commonly or customarily paid for other like services. Johnson vs. Pensacola & P. R. R. Co., 16 Fla., 623, 26 Am. Rep. 731; Agnell, Carr. Sec. 392; Lawson, Carr. Sec. 125.' "
Cotting vs. Godard, 183 U. S., 79, 97-98.

It will be noted that in the Cotting case the decision of the United States Supreme Court turned upon the fact that by comparison

"* * * the charges made by the defendants were no greater (and in many instances, less) than those of any other stock yards in the country. Nothing is stated to outweigh the significance of that finding."
183 U. S., 79, 97.

In the case of Interstate Commerce Commission vs. Southern Railway Company, 117 F. R., pages 741, 745, the Court says:

" * * * that the most satisfactory test to be applied in this case is to compare the Danville rates with those in force at numerous other cities and towns in the South, where the circumstances are as nearly as may be similar to those at Danville. This has been done by numerous witnesses for the defense. The rates to and from a great number of towns and cities in the South—some larger and some smaller, some of more and some of less commercial importance, than Danville; some inland and some having water as well as rail transportation; some being on only one railroad and some having more than one road—have been shown. The result of comparisons between these rates and the Danville rates is the conclusion that the latter compare favorably with the former."
117 F. R., p. 745.

This case was affirmed by the Circuit Court of Appeals, 122 F. R., p. 800, and was appealed to the United States

Supreme Court and afterwards dismissed on motion of appellant, the Interstate Commerce Commission. See 195 U. S., page 639.

The Interstate Commerce Commission has likewise laid it down that one of the best tests of the reasonableness of a rate is comparison with other rates made under similar circumstances and conditions.

> "The reasonableness of a rate must, consequently, be ascertained in every instance in which the question arises by its relations both to the carrier and to the shipper, and by comparison with rates normally charged for like or similar service."
>
> Delaware State Grange vs. N. Y. P. & N. R. Co., 3 I. C. R., 554, 561.

From all the foregoing, it may be justly said that probably the best test of the reasonableness of a rate is comparison of rates made under similar circumstances and conditions, or to use language adopted by the Supreme Court of the United States:

> " * * * it is to be ascertained by the amount commonly and customarily paid for like services."
>
> 183 U. S., 79, 98.

The value of this test, however, depends upon the fact that the rates compared must be those paid for "like services"; in other words, the rates compared must be made under similar circumstances and conditions. It is important to bear this in mind, and, in order to emphasize this point, we call attention to some of the cases wherein it has been held that certain rates could not be used for the purpose of comparing same with other rates, because the rates attempted to be compared were not made under similar circumstances or conditions, and could not, therefore, throw any light upon the reasonableness of each other.

For instance, it has been held that a local rate cannot be compared with a through rate, because

> " * * * the service rendered by a railway company in transporting local passengers from one point on its line to another is not identical to the service rendered in transporting through passengers over the same rails."
>
> 162 U. S., 197, 231.
> 117 U. S., 355.

It has been likewise held that the rates prevailing in one State can not be compared with the rates prevailing in another State, unless the circumstances and conditions surrounding the rates are shown to be similar.

The Supreme Court of the United States says:

> "It is said by the appellants that the local rates established by the Nebraska statute are much higher than in the State of Iowa, and that fact shows that the Nebraska rates are reasonable. This contention was thus met by the Circuit Court: 'It is, however, urged by the defendants that, in the general tariffs of these companies, there is an inequality; that the rates in Nebraska are higher than those in adjoining States; and that the reduction by House Roll 33 simply establishes an equality between Nebraska and the other States through which the roads run. The question is asked, are not the people of Nebraska entitled to as cheap rates as the people of Iowa? Of course, relatively, they are. That is, the roads may not discriminate against the people of any one State. * * * (But they are not necessarily bound to give absolutely the same rates to the people of all the States), for the kind and amount of business, and the cost thereof are factors which determine largely the question of rates, and these vary in the several States. The volume of business in one State may be greater per mile while the cost of construction and of maintenance is less. Hence, to en-

force the same rates in both States might result in one great injustice, while in the other it would only be reasonable and fair. Comparisons, therefore, between the rates of two States, are of little value, unless all of the elements that enter into the problem are presented. It may be true, as testified by some of the witnesses, that the existing local rates in Nebraska are 40 per cent higher than similar rates in the State of Iowa. But it is also true that the mileage earnings in Iowa are greater than in Nebraska. In Iowa there are 230 people to each mile of railroad, while in Nebraska there are but 190; and as a general rule, the more people there are, the more business there is. Hence a mere difference between the rates in two States is of comparatively little significance.' 64 Fed. Rep., 165. In these views we concur, and it is unnecessary to add anything to what was said by the Circuit Court on this point."

Smyth vs. Ames, 169 U. S., 466, 539-540.

It has likewise been held that a highly competitive rate can not be compared with a local rate, as one throws no light on the reasonableness of the other. The case of the L. & N. Ry. Co. vs. Eubank, 184 U. S., 27, illustrates this proposition.

In that case a rate of 12 cents per hundred pounds was charged on tobacco from Nashville to Louisville, a distance of 185 miles, whereas from an intervening point, to wit, Franklin, Ky., to Louisville, a distance of 134 miles, the rate on tobacco was 25 cents. It was held that because the 12-cent rate was made by competition, that is to say, because the tobacco would go by river from Nashville to Louisville, unless the railroad reduced its rate to 12 cents, the fact that the rate was made by competition prohibited its being compared with the rate of 25 cents for the shorter distance, the latter rate being made where there was no competition. Therefore, it was improper to compare the two rates, as they were not made under the same circum-

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stances and conditions. The rate of 25 cents was admitted and held to be "in fact just and reasonable" in itself, irrespective of the 12-cent competitive rate for the longer distance.

L. & N. R. R. Co. vs. Eubank, 184 U. S., 27.

It has likewise been frequently held by the Supreme Court of the United States that a rate to a longer-distance point, brought about by competition, can not be compared with a higher rate to intervening points for the purpose of proving the higher rate to the intervening point unreasonable, because the rate to the longer-distance point is not made under circumstances and conditions similar to those of the rate to the intervening point.

See I. C. C. vs. Alabama Midland R. Co., 168 U. S., 144.

L. & N. Ry. Co. vs. Behlmer, 175 U. S., 648.

E. T. V. & G. Ry. Co. vs. I. C. C., 181 U. S., 1.

It has been likewise held that a local rate can not be compared with a part or division of a through rate.

> "A local rate between two points of the same road is not necessariiy unlawful because it is higher than the rate charged under the joint tariff for a much longer haul over a line which is composed in part of that portion of the road to which the local rate applies."

Parsons vs. Chicago, etc., R. Co., 63 F. R., 903 (citing Chicago, etc., R. Co. vs. Osborne, 10 U. S. App., 430, 52 F. R., 912, 53 Am. & Eng. R. Cas., 18, reversing 48 F. R., 49).

Tozer vs. U. S., 52 F. R., 917.

U. S. vs. Mellen, 53 F. R., 229.

The reason why they cannot be compared is that the local rate is not made under circumstances and conditions similar to those of the division of the through rate.

"That the portion of a through rate received by one of the companies party thereto may be less than its local rate is not questioned. The Interstate Commerce Commission, which has filed a brief in this case, and which has criticized some of the views expressed in the opinion of the Court of Appeals in Osborne vs. Chicago & N. W. R. Co., 52 F. R. 912, concedes this, and also that the judgment in that case was right."

Parsons vs. Chicago & N. W. R. Co., 167 U. S., 447, 457-458.

"That, where two companies owning connecting lines of road unite in a joint through tariff, they form for the connected roads practically a new and independent line. Neither company is bound to adjust its own local tariff to suit the other, nor compellable to make a joint tariff with it. It may insist upon charging its local rates for all transportation over its line. If, therefore, the two companies by agreement make a joint tariff over their lines, or any parts of their lines, such joint tariff is not the basis by which the reasonableness of the local tariff of either line is determined. To illustrate: On the defendant's road, the distance from Turner to Chicago is 30 miles; on the Lake Shore line, from Chicago to Cleveland it is two or three hundred miles. The defendant company may charge 15 cents for transporting grain the 30 miles from Turner to Chicago, providing that be in fact only a reasonable charge for the service, although the Lake Shore Company charges no more for transporting it from Chicago to Cleveland; and the fact that the rate on each line is 15 cents for the distance named will not prevent the two companies from making a joint tariff for grain shipped from Turner to Cleveland of 12 cents; less than the local tariff of either. That we may not be misunderstood, we do not mean to intimate that the two companies, with a joint line, can make a tariff from Turner to Cleveland higher than from Turner to Buffalo, or any other intermediate point between Cleveland and Buffalo; for when the two companies, by their

joint tariff, make a new and independent line, that new and independent line may become subject to the long and short haul clause. But what we mean to decide is that a through tariff on a joint line is not the standard by which the separate tariff of either company is to be measured or condemned."

Chicago & N. W. Ry. Co. vs. Osborne, 52 F. R., 912, 914-915.

From all the foregoing, it appears that one of the best tests of the reasonableness of a rate is comparison of rates made under similar circumstances and conditions, but this test, in order to be of value, can only be applied when the rates are in reality made under similar circumstances and conditions.

The courts have also laid it down that one of the most important and best tests of the reasonableness of a rate is the fact that the rate is the result of competition.

The United States Supreme Court has said:

"If there be any competition the extent of the charge for the service will be seriously affected by that fact. Competition will itself bring charges down to what may be reasonable. * * * "

U. S. vs. Trans-Missouri Freight Ass'n, 166 U. S., 290, 339.

Again, the United States Supreme Court has said:

"It must be remembered that these roads are competing roads; that competition tends to a reduction of rates, some times, as the history of the country has shown, below that which affords any remuneration to those who own the property."

Smyth vs. Ames, 169 U. S., 466, 542.

In still another case the United States Supreme Court has said:

"There can be no doubt that the general tendency of competition among competing railroads is towards lower rates for transportation, and the result of lower rates is generally a greater demand for the articles so transported, and this greater demand can only be gratified by a larger supply, the furnishing of which increases commerce. This is the first and direct result of competition among railroad carriers * * * "

"The natural, direct, and immediate effect of competition is, however, to lower rates, and to thereby increase the demand for commodities, the supplying of which increases commerce * * *."

U. S. vs. Joint Traffic Ass'n, 171 U. S., 505, 576-577.

Speaking of the Act to Regulate Commerce, one of the Circuit Courts of the United States has said:

"The statute is based upon the principle, which is the controlling element in regulating prices, values, and rates in the general commercial and manufacturing business of the country—self-interest controlled by free competition. When the act was adopted, Congress well knew that every railway line was using, and would continue to use, its utmost endeavors to secure as large a share of the transportation business within its reach as it was possible for it to do. The great complaint was that each railway, by means of secret rebates or other like devices, was endeavoring to outstrip its rivals in securing business. The theory of the act is that, if competition is left free at all points where two or more lines come into competition, there will be found established reasonable rates."

Van Patten vs. Chicago, M. & St. P. Ry. Co., 81 F. R., 545, 552.

The Interstate Commerce Commission likewise recognizes the fact that competition is one of the best tests of the reasonableness of a rate.

"Competition is favored by the laws. * * *

"The ground upon which competition is favored is that it conduces to the reasonableness of rates or to the protection of the public from unreasonably high or excessive rates."

Central Yellow Pine Ass'n vs. I. C. R. R., *et al.*, 10 I. C. R., 505, 541.

The Courts have also laid it down that the opinion of expert witnesses familiar with railway traffic is one of the most valuable tests of the reasonableness of a rate.

The Circuit Court of Appeals for the Fifth Circuit, says:

"On the contrary, the great volume of testimony given by these witnesses (who show full competency to testify) is directly and clearly to the effect that the rates are reasonable and just. One witness gives as a reason for this opinion (for the subject is hardly susceptible of better proof than the opinion of experts) that the rates are fixed upon the lowest obtainable combination of the rates to competitive points, with the local rates therefrom to the non-competitive points. * * *"

I. C. C. vs. W. & A. R. Co., 93 F. R., 83, 88.
Affirmed I. C. C. vs. W. & A. R. Co., 181 U. S., 29.

One of the Circuit Courts uses the following language, which was affirmed on appeal:

"The criteria to which I think the greatest weight should be given are as follows: The opinions of expert witnesses; the effect of the present rates on the growth and prosperity of Danville; the cost of transportation as compared with the rates charged; and the rates in force at numerous other cities, where the circumstances are as nearly similar as may be to those prevailing at Danville."

I. C. C. vs. So. Ry. Co., 117 F. R., 741, 744.
I. C. C. vs. So. Ry. Co., 122 F. R., 800.
I. C. C. vs. So. Ry. Co., 195 U. S., 639.

From all the foregoing, it appears that the main tests of the reasonableness of a rate are as we originally set forth, to wit:

Comparison of rates made under similar circumstances and conditions.
Competition.
Opinions of expert witnesses.

We will now discuss the undisputed and uncontradicted evidence bearing upon the question of reasonableness.

Summary VIII Continued.

Comparison of Similar Rates Made Under Substantially Similar Circumstances and Conditions.

The reconsigning rate of 28 cents per hundred pounds from East St. Louis to Atlanta was compared with other rates made under substantially similar circumstances and conditions; that is to say, in reference to distance, in reference to the same commodity; in reference to the same territory of origin and same territory of consumption, and in reference to being carried over practically the same railroads.

The distance via Southern Railway from East St. Louis to Atlanta is 739 miles. For this haul, Southern Railway received the reconsigning rate of 28 cents per hundred pounds on hay, that is to say, 7.9 mills per ton per mile.

Testimony McKellar, pages 101-102 of Transcript of Record.

Peoria, Illinois, is a point which originates hay. The uncontradicted testimony shows it is in the same general territory as East St. Louis; that there is a regular movement from Peoria to Atlanta and other southeastern territory. The traffic, and the conditions surrounding it are more or less similar to the conditions surrounding the hay traffic from East St. Louis to Atlanta. The rate on hay from Peoria to Atlanta, is, therefore, comparable to the rate from East St. Louis to Atlanta. The distance is likewise similar, for the reason that the distance from Peoria to Atlanta, via short line, is 693 miles, as against the distance from East St. Louis to Atlanta, of 739 miles. The rate from Peoria to Atlanta, on hay, per hundred pounds, is 34 cents, or one cent per ton per mile.

Pages 102-103 of Transcript of Record.

It, therefore, appears that the comparison of these two rates is favorable to the reconsigning rate of 28 cents from East St. Louis to Atlanta.

Terre Haute, Indiana, is another point which originates hay. Short line mileage distance, via Evansville, to Atlanta, is 555 miles; the rate per hundred pounds on hay, is 30½ cents; rate per ton per mile is one cent and 1-10 mill.

Pages 102-103 of Transcript of Record.

It thus appears that by comparing the reconsigning rate of 28 cents per hundred pounds, from East St. Louis to Atlanta, for a distance of 739 miles, with the rate of 30½ cents from Terre Haute, Indiana, to Atlanta, a distance of 555 miles; the result is favorable to the reconsigning rate from East St. Louis. For a lesser distance, the rate is actually greater, and the rate per ton mile is actually greater.

Another point where hay originates is Vincennes, Indiana. The distance from Vincennes to Atlanta is 498 miles. The rate on hay is 30 cents per hundred pounds. The rate per ton per mile is 1.20 cents.

Page 103 of Transcript of Record.

Page 285 of Transcript of Record.

This comparison is likewise favorable to the 28-cent reconsigning rate from East St. Louis to Atlanta, for it appears that the rate is higher and the rate per ton per mile higher and the distance less.

Hay originates at Indianapolis, Indiana. The distance from Indianapolis to Atlanta, via Louisville, is 564 miles. The rate is 33½ cents per hundred pounds, or 1.19 cents per ton per mile.

Page 103 of Transcript of Record.

This comparison is likewise favorable to the reconsigning rate from East St. Louis to Atlanta. The distance is less, the rate higher, and the rate per ton per mile higher than the reconsigning rate of 28 cents.

Kansas City is a point which originates hay. The distance from Kansas City to Atlanta is 905 miles. The rate is 34½ cents per hundred pounds; and the rate per ton per mile is 7.6 mills.

Page 103 of Transcript of Record.

This comparison is likewise favorable to the East St. Louis reconsigning rate of 28 cents per hundred pounds. Other comparisons were made, as appears in the Transcript of Record, pages 101 to 106, inclusive; and as appears in defendant's Exhibit 23, page 285 of Transcript of Record.

In every instance, the reconsigning rate of 28 cents per hundred pounds compares favorably with other rates made under similar circumstances and conditions. Indeed, this reconsigning rate of 28 cents per hundred pounds is such a low rate that it compares favorably with the lowest rate in the world; that is to say the rate on hay from Chicago to New York. The uncontradicted testimony shows that it would be unfair to compare the rates from Chicago to New York with rates from East St. Louis to Atlanta, for the reason that grain and hay move in tremendous volume from Chicago to New York. The distance traversed is through a densely populated section; the tonnage is greater, and the earnings per mile are greater than in the sparsely settled sections between East St. Louis and Atlanta. Nevertheless, in spite of these facts, it appears that the rate on hay, from Chicago to New York is 30 cents per hundred pounds; a distance of 912 miles, against the reconsigning rate of 28 cents per hundred pounds, East St. Louis to Atlanta. Another remarkable fact is that between Chicago and New York, the rate on hay is higher than the rate on grain, the

rate on the latter being 17½ cents per hundred pounds, whereas between East St. Louis and Atlanta, hay takes the same rate as grain. It is usually unfair and improper to compare rates by water with rates by rail, the rates by water being generally less than the rates by railways. In this case, however, it appears that the rate by river from East St. Louis to Cairo—a distance of 200 miles, is 10 cents per hundred pounds, or one cent per ton per mile; whereas the reconsigning rate of 28 cents per hundred pounds from East St. Louis to Atlanta yields only .79 of a cent per ton per mile.

The reconsigning rate of four cents per hundred pounds from East St. Louis to Cairo yields .53 of a cent per ton per mile.

All of the foregoing facts are conclusively settled by the undisputed and uncontradicted evidence in this case.

Pages 103-104, 108-109, 285 of Transcript of Record.

Summary VIII Continued.

Competition.

The undisputed and uncontradicted evidence shows that the reconsigning rate on hay, from East St. Louis to Atlanta, is the result of competition of various kinds.

Mr. Frink testified that he had been in the railroad business since 1855, and had been living in East St. Louis for 70 years. That hay and grain formerly reached Southeastern territory by steamers down the Mississippi River, which steamers touched at Johnsonville, Memphis, Vicksburg, and other points—hay and grain being transported to interior points, such as Atlanta, by rail. He said that on the first through carload from East St. Louis to the Southeast, the rate was made by competition with the river route in connection with the rail routes from the river landings. The first through rail shipments into the South began in the fall of 1870, and the rates were made in competition with the water-and-rail route.

Pages 113 to 115, inclusive, of Transcript of Record.

We have seen that in territory between Chicago and New York, rates on hay are greater than the rates on grain, for instance, the rate on grain from Chicago to New York is 17½ cents per hundred pounds, whereas the rate on hay from Chicago to New York is 30 cents per hundred pounds.

Page 104 of Transcript of Record.

In many other parts of the country the rates on hay are higher than the rates on grain, but from East St. Louis to Southeastern points, hay takes the same rates as grain, and, any competition which reduces the rates on grain likewise reduces the rates on hay for the reason that from East

St. Louis to Southeastern points, the rates on hay and grain are the same. Grain is brought from various points of the country by water from Eastern seaboard cities, such as New York and Boston, to the ports of Charleston, Savannah, and Brunswick, and from these is carried to Atlanta and other Southeastern points. A man in Atlanta who desires to buy grain, might order it from New York at a certain price, and get the benefit of a water rate to Savannah, and transport it from Savannah to Atlanta. The railroads from St. Louis and East St. Louis to Atlanta are obliged to meet this rate on grain. As the actual movement of grain from New York, Baltimore, etc., through ports such as Savannah and Brunswick, to Atlanta, is large, this competition actually forces down the rates on grain from East St. Louis to Atlanta, and therefore forces down the rates on hay from East St. Louis to Atlanta. Hence, the rates on hay from East St. Louis to Atlanta are the result of, and largely controlled by water competition, via the Great Lakes, Atlantic Ocean, and thence by rail to Atlanta.

Pages 50-52 of Transcript of Record.

Another species of competition which has a large effect in reducing rates on hay from East St. Louis to Atlanta, is competition with other products used as fodder for animals, such as cottonseed hulls, rice chaff, alfalfa, and things of that sort raised in the South; for it is patent that hay must be shipped to Atlanta at a low rate, or the people of Atlanta would prefer to use as fodder, cottonseed hulls, rice chaff, alfalfa, etc., for their animals—hence the rate on hay is affected by this species of competition.

Page 51 of Transcript of Record.

Competition between railways tend to reduce the rate on hay from East St. Louis to Atlanta. There are eighteen different railways leading out of East St. Louis. Many

of these, and their connections compete for the traffic on hay from East St. Louis to Southeastern points. This competition reduces the rate on hay.

Page 50 of Transcript of Record.
Pages 94-95 of Transcript of Record.
Pages 110-111 of Transcript of Record.

Another species of competition which reduces the rates on hay, arises from the fact that hay is produced in Missouri, Kansas, Nebraska, and other places, and the same is shipped into the Southeast for consumption, and in competition with hay from East St. Louis.

Page 93 of Transcript of Record.
Pages 99-100-101 of Transcript of Record.
Pages 94-95 of Transcript of Record.
Pages 109-110 of Transcript of Record.

The foregoing is an abstract of the testimony of witnesses, all of whom unanimously stated that the reconsigning rate on hay from East St. Louis to Atlanta is the result of intense competition, between all-rail routes and rail-and-water routes, competing territories, competing markets and competing products. This evidence is undisputed and uncontradicted. These competitive forces have reduced the rate on hay from St. Louis, and East St. Louis, proper, to Atlanta, from 54 cents per hundred pounds in 1879, to 27 cents per hundred pounds, in 1905.

Page 289 of Transcript of Record.

Summary VIII Continued.

Opinions of Experts.

T. C. Powell, Fifth Vice-President Southern Railway Company, testified that he had been engaged in the traffic departments of the railways of the United States since 1884—a period of 22 years, and he considered the reconsigning rate of 28 cents per hundred pounds on hay from East St. Louis to Atlanta reasonable, because it was the result of competitive forces. Hay has the benefit of all competition existing with reference to grain. Rates on grain are affected by water competition up and down the Mississippi River, to Corinth, Vicksburg, etc., and also from North Atlantic ports to South Atlantic ports.

Because the rates on hay are likewise the result of competition with commodities produced locally in the South.

Because rates on hay are the result of competition between transportation lines serving different producing sections of the country.

Because cars employed in hauling hay could probably be used in a more lucrative traffic, for instance, only 22,000 pounds of hay could be loaded in a car, whereas 60,000 or 70,000 pounds of grain could be loaded into the same car. The revenue on a car of hay would amount to $52 or $56, whereas the revenue on a car of grain would exceed $150.

Page 49 of Transcript of Record.

Pages 64-66 of Transcript of Record.

E. K. Voorhees, General Freight Agent, St. Louis and San Francisco R. R., has been employed in the traffic departments of the railway companies of the United States since 1880—a period of 26 years. Mr. Voorhees testified that in his opinion, the reconsigning rate, of 28 cents per hundred pounds on hay, from East St. Louis to Atlanta was reason-

able, because the same was produced by competition of the Ohio River markets, Cairo, Evansville, Cincinnati, etc., and the competition of the hay-producing territory in Illinois and Indiana, Missouri, Missouri River, and the Southwest. He considered the rate reasonable, taking into view the profits which are made on hay rates, and rates on other commodities, such as grain, and because in the Southwest territory, the rates on hay average 30 to 40 per cent higher than the rates on grain, whereas the reconsigning rate of 28 cents per hundred pounds from East St. Louis to Southeastern points is the same as the rate on grain; that hay will average a load of 11 tons per car, whereas corn will average 26 tons per car.

Pages 92, 93, 94 of Transcript of Record.

Joseph M. Denyven, General Freight Agent of the Mobile & Ohio R. R. Co. has been in the traffic departments of the railways of the United States for 24 years, considers the reconsigning rate of 28 cents per hundred pounds on hay, from East St. Louis to Atlanta reasonable. The roads leading out of St. Louis compete with each other for the traffic, with the exception, perhaps, of the Iron Mountain, which considers the rate too thin to be profitable. The rate is the result of this competition, and, therefore, reasonable.

Pages 94-95 of Transcript of Record.

Robert L. McKellar, Asst. Freight Traffic Manager, Southern Railway, has been in the traffic departments of the railways of the United States for 21 years. He regards the reconsigning rate of 28 cents per hundred pounds from East St. Louis to Atlanta as reasonable, because it was the result of competition, and was sufficiently low to protect the free movement of the traffic in competition with other markets, considers it reasonable as compared with other rates.

Pages 99, 100, 101, 102, 103, 104, 105, 106 of Transcript of Record.

J. R. Peachy, Asst. Gen. Freight Agent of the Illinois Central R. R. Co., has been engaged in the traffic departments of the railways of the United States since 1883—a period of 23 years; considers the reconsigning rate of 28 cents per hundred pounds from East St. Louis to Atlanta a reasonable and just rate, because it compares favorably with rates on other commodities used chiefly for animal food, because the loading of grain is much in excess of that of hay, and the revenue on grain is much greater than it is on hay.

Page 111 of Transcript of Record.

Mr. Seth Frink has been in the service of the railways of the United States since 1855—a period of 51 years; regards the reconsigning rate of 28 cents per hundred pounds on hay from East St. Louis as unreasonably low, and unremunerative, and the result of competition of the Mississippi River.

Pages 113, 114, 115 of Transcript of Record.

All the foregoing testimony is undisputed and uncontradicted, and proves conclusively the reasonableness and justness of the reconsigning rate from East St. Louis to Atlanta.

Summary VIII Continued.

Additional Factors Proving Reasonableness.

There are additional criteria of the reasonableness of a rate, for instance, the prosperity of the towns involved has been considered by the courts as furnishing ground for concluding that a rate is reasonable.

I. C. C. vs. So. Ry. Co., 117 F. R., 741, 744.
I. C. C. vs. So. Ry. Co., 122 F. R., 800.
I. C. C. vs. So. Ry. Co., 195 U. S., 639.

In the present case it appears from the uncontradicted testimony that East St. Louis is the largest primary hay market in the United States.

Page 46 of Transcript of Record.
Page 286 of Transcript of Record; Defendant's Exhibit No. 25.

Another important factor in the present case bearing upon the reasonableness of the rate is that which we have already mentioned in dealing with the comparison of the rates; that is to say that hay from East St. Louis to Southeastern points takes the same rate as grain, which is not a fact in other parts of the country. For instance, between Chicago and New York, although the railroads are prosperous, and the volume of traffic and population dense, and the earnings per mile very large, hay was charged 30 cents per hundred pounds, whereas grain was carried at 17½ cents.

Page 104 of Transcript of Record.

In the Southwest, the rates on hay are from 30 to 40 per cent higher than on grain.

Page 93 of Transcript of Record.

It has been decided by the courts that it is reasonable and just for hay to take a higher rate than grain.

"Taking into the consideration only the cost of carrying hay and straw, and their character as articles of transportation, as shown by the evidence, it is not clear at all that the rate of 30 cents per 100 pounds is an unreasonable and unjust freight charge. The contention of complainant is, rather, that charging a different freight rate for the carriage of hay and straw from the rate charge for the carriage of wheat is unfair discrimination against wheat. These articles are so different in their character, and the condition of traffic with respect to wheat are so entirely different from those which pertain to the carriage of hay and straw that I am of the opinion that the fact that wheat is carried for a less rate than hay and straw is not proof that the higher rate charged for the carriage of hay and straw is unreasonable and unjust.

"The bill is dismissed, with costs adjudged against the complainant."

I. C. C. vs. L. S. & M. S. R. Co., 134 F. R., 942, 947-948.

Affirmed, 202 U. S., 613.

The fact, therefore, that hay from East St. Louis to Southeastern points takes the same rate as grain, is potent evidence in determining the reasonableness of the reconsigning rate on hay in the present case.

There is another piece of evidence which furnishes powerful proof of the reasonableness of the rates on hay from East St. Louis to the Southeast.

The United States Government has published a table showing the history of these rates, which table is as follows:

Summary VIII Continued.

Rates Via All Rail.

Statement showing rates on hay and grain, from St. Louis and East St. Louis proper, to Atlanta, Georgia, from November 15, 1879, to February 1, 1905.

November 15, 1879	54c	per	100	lbs.
April 8, 1880	48c	"	"	"
September 1, 1880	45c	"	"	"
September 1, 1881	42c	"	"	"
October 1, 1881	40c	"	"	"
November 25, 1881	45c	"	"	"
April 12, 1882	42c	"	"	"
July 10, 1882	35c	"	"	"
September 1, 1882	40c	"	"	"
July 15, 1883	38c	"	"	"
February 17, 1884	36c	"	"	"
April 10, 1884	32c	"	"	"
July 15, 1887	34c	"	"	"
January 23, 1888	32c	"	"	"
October 15, 1891	29c	"	"	"
February 28, 1900	26c	"	"	"
April 18, 1900	29c	"	"	"
February 1, 1905	27c	"	"	"

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This table shows that the rate on hay has been constantly and steadily reduced during the past 25 years.

Fifth. If the reconsigning rates charged by the plaintiff in error can be compared with the portion received by it from other railroads from East St. Louis to Southeastern points on through shipments, the evidence in this case conclusively shows that the difference in the service amounts to more than the difference in the rate charged.

If it be conceded for argument's sake that the portion of the through rate and the reconsigning rate may be compared, we contend that the evidence conclusively shows that the difference in the cost of the service is greater than the difference in the rate.

We first call the Court's attention to Exhibit No. 29, which shows the movements necessary in a through shipment. This Exhibit illustrates a shipment received from the Wabash Railroad Company, destined to some Southeastern point.

Switching Movement.

A to B	(Placing car on Southern Railway Company's interchange track by Wabash Railroad Company)	.8 mi.
B to C	(To Denverside Yards by Southern Railway Company	6.3
C to D	(Placing car in through train southbound)	.5
	Total.....	7.6 mi.

This requires only two movements on the part of the Southern Railway Company, and an average of less than twenty-four hours' time.

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Exhibit No. 28 shows the movements required on a shipment received from the Wabash Railroad Company, consigned to the St. Louis Hay & Grain Company's Nation-

al Warehouse, located on the lines of the Southern Railway Company.

Switching Movement.

A to B	(Placing car on Sou. Ry. Co.'s interchange track by Wabash R. R. Co.)	.8 mi.
B to C	(Southern Railway Company handles cut of cars from Brooklyn Yards to 6th St. Yards)	7.0
C to D	(Cut of cars is broken up in 6th St. Yards)	.2
D to E	(Next morning Southern Ry. Co. places car at Warehouse)	.6
	Total.....	8.6 mi.

This requires three movements on the part of the Southern Railway Company.

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Exhibit No. 27 shows the movements required in returning emptys from National Warehouse to Wabash R. R. Co.

Switching Movement.

A to B	(Empty car at Warehouse is switched by Southern Ry. Co. to 6th St.Yards)....	.6 mi.
B to C	(In 6th St. Yards Southern Railway Co. makes up cut of empty cars for Dyke Yards)	.2
C to D	(Southern Ry. Co. handles cut from 6th St. Yard to Dyke Yard).....	1.6
D to E	(Southern Ry. Co. breaks up cut of cars and makes up cut for Brooklyn Yard).	.2

E to F (Southern Ry. Co. handles cut of cars next morning from Dyke Yard to Brooklyn Yard) 8.6
F to G (Southern Ry. Co. places Wabash car on Wabash track at Brooklyn)..... .8

Total.....12. mi.

This requires six movements by the Southern Railway Company.

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Exhibit No. 31 shows the movements required to place empty car at National Warehouse, and to take loaded car from National Warehouse to train destined for Southeastern point.

Switching Movement.

A to B (Southern Ry. Co. switches car in Dyke Yard into cut of cars for 6th St. Yard) .2 mi.
B to C (Southern Ry. Co. moves cut of cars from Dyke Yard to 6th St. Yard)..... 1.6
C to D (Southern Ry. Co. takes car from track in 6th St. Yard and places it at Warehouse) 6
D to E (Southern Ry. Co. takes loaded car (after interval) from warehouse and places it in Southern Ry. Co.'s 6th St. Yard).. .6
E to F (Southern Ry. Co. makes up various cuts of cars in 6th St. Yards for different points) 2
F to G (Southern Ry. Co. takes cut of cars from 6th St. Yard to Denverside Yard)... 2.2
G to H (Southern Ry. Co. places car in train).. .5
H to I (Weighs car in Denverside Yard)..... .2

Total..... .6.1 mi.

This requires eight movements on the part of the Southern Railway Company.

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Exhibit No. 30 shows the movements required in furnishing an empty to the Wiggins Ferry Company, and the movements by the Wiggins Ferry Company in placing empty at Union Elevator located on the lines of the Wiggins Ferry Company, and in taking loaded car from the Union Elevator by the Wiggins Ferry Company and delivering same to Southern Railway Company and placing same by Southern Railway Company in train destined for Southeastern point.

Switching Movement.

A to B	(By Southern Railway Company selecting car in Dyke Yard and placing same in cut for Wiggins Ferry Company).	.2 mi.
B to C	(By Southern Ry. Co. delivering cut of cars to Wiggins Ferry Company)...	.3
C to D	(By Wiggins Ferry Company, breaking up cut of cars in Garden Yards).....	.4
D to E	(By Wiggins Ferry Company placing cut of cars at Warehouse).....	.7
E to F	(By Wiggins Ferry Company taking cut of loaded cars from Warehouse)....	.7
F to G	(By Wiggins Ferry Company making up cut for Southern Railway Company)..	.4
G to H	(By Wiggins Ferry Company delivering cut to Southern Ry. Co. in Dyke Yard)	.2
H to I	(By Southern Ry. Co. breaking up cut received from Wiggins Ferry Company)	.3
I to J	(By Southern Ry. Co. moving cut to Denverside Yard)	3.4

J to K (Placing car in train destined for Southeastern points) 5

Total..... 7.1

Page 286, Transcript of Record.

This requires five movements on the part of the Southern Railway Company, and requires five movements on the part of the Wiggins Ferry Company, for which the Southern Railway Company at the time in question paid the Wiggins Ferry Company $1.50.

Page 122, Transcript of Record.

The undisputed evidence in this case shows that these movements cost the railroad company on an average of 30c. each. (See evidence of Mr. H. B. Spencer, pages 183-184, Transcript of Record.) The evidence shows that this cost has been determined by actual experience in the East St. Louis yards.

The evidence conclusively shows that the railroad company is entitled to a charge for the use of the car, and if the Commission, by its decision, finds anything, it does find that the railroad company is entitled to some compensation of this kind. The undisputed evidence shows that in reconsigned shipments from either warehouse, the car is in use on an average of four days. (See evidence of Mr. C. P. Cooper, page 122, Transcript of Record; Mr. C. G. Walker, page 134, Transcript of Record; Chas. W. White, page 139, Transcript of Record.) What charge should be made per day for the car is a little difficult to determine from the evidence. The evidence shows the earning capacity of a freight car of the Southern Railway Company, at the time in question, to be $2.02 per day (page 107, Transcript of Record), and in the case of Schumacher vs. C. & N. W. Ry. Co., 207 Ill., p. 204, the Supreme Court says, "the average earning

capacity of freight cars upon twenty-nine railroads in the Association, for the year 1901, was $2.42, and on appellee's road, $2.15 per day." So it would seem that the estimate made by the Southern Railway Company of the earning capacity of its freight cars is conservative. The evidence also shows that it cost the Southern Railway Company 52c. per day per car to maintain its freight cars (page 123, Transcript of Record). It may be possible that it would not be fair to the shipper to charge $2.02, the earning capacity of a car, because it requires all of the other machinery of the road to enable the car to earn such sum, and it would not be fair to the railroad company to only charge 52c., because this represents the actual cost of maintenance, and the company is entitled to something more. There is no theory upon which the 20c per diem arrangement between the railroads may be considered as a fair charge.

The Commission, in its report of 1902, in passing upon this per diem charge, used the following language:

> "The interchange per diem rate is 20 cents per car per day. This is generally regarded as too low, but it is necessary to make a low charge in order to secure an agreement among so many and so diverse interests. Even this inadequate sum is said to be higher from 30 to 50 per cent than the average income per day formerly received by the principal companies under the mileage system. The present arrangement is based on contracts for one year to July 1, 1903, made through the Secretary of the American Railway Association. Though some companies which both borrow and lend on a large scale will suffer a net loss by the adoption of the new method, unless they readjust their relations with the connecting lines, or advance the price to the consignee for certain switching and other services—it is confidently believed that the reform will be permanent.
>
> "The weakness of the new plan is in its rigidity. The same charge applies alike to cars of 15 tons capacity or

of 50 tons, and it is the same per day for a 10 mile journey as for one of 2,000 miles; but the same weakness concerning capacity existed under the mileage plan. It is also true that under the new plan, as under the old, a borrower may unfairly retain a foreign car for local service by paying for it, and thus enjoy the use of another road's car at a ridiculously low rental. But the evil is partly met by the requirement that a higher charge ($1 a day) shall be made after the car has been kept by the borrower more than thirty days."

Page 116, Transcript of Record.

If we take 75 cents per day for the use of the car, and from the evidence in this case we would be justified in taking a much larger sum, and make a calculation of the difference in cost of services in through shipments and reconsigned shipments, the result is as follows:

Through Shipment.

2 movements at 30c. per movement	$0.60
Use of car 1 day	.75
Total	$1.35

Reconsigned Shipment from National Warehouse.

Movements in delivering loaded car to Warehouse	3
Movements in returning empty from Warehouse	6
Movements in placing empty at Warehouse and taking away loaded car	8
Total	17
17 movements at 30c. per movement	$5.10
Use of car 4 days at 75c. per day	3.00
Total	$8.10

Reconsigned Shipment from Union Warehouse.

5 movements by Southern Ry. Co. at 30c. per movement	$1.50
Amount paid Wiggins Ferry Company for its movements	1.50
Use of car 4 days at 75c per day	3.00
Total	$6.00

In the reconsigned shipment from the National Warehouse, if we eliminate delivering the loaded car to the Warehouse and returning the empty, the statement is as follows:

8 movements by the Southern Ry. Co. at 30c. per movement	$2.40
Use of car 4 days at 75c. per day	3.00
Total	$5.40

It will be borne in mind in these statements that no charge is made for the use of the car while the loaded car is being delivered to the National Warehouse and the empty returned. It therefore appears that the reconsigned shipments from the National Warehouse, if we take into consideration the movements in placing the loaded car at the Warehouse, and returning the empty, exceeds the cost of a through movement, as follows:

Cost of reconsigned shipment	$8.10
Cost of through shipment	1.35
Excess	$6.75

If we eliminate the delivery of the loaded car and the return of the empty, the excess is as follows:

Cost of reconsigned shipment	$5.40
Cost of through shipment	1.35
Excess	$4.05

The excess from the Union Warehouse is as follows:

Cost of reconsigned shipment	$6.00
Cost of through shipment	1.35
Excess	$4.65

On an average car, the difference in the portion received by the Southern Railway Company on a through shipment, and the amount received by it on a reconsigned shipment is $4.00 per car. It therefore appears that in each instance the cost of service is greater than the difference in the rate.

The clerical service is likewise greater, and more expensive in a reconsigned shipment than in a through shipment. Only three documents are required in a through shipment.

In making these calculations we have given the shipper the benefit of every doubt, as shown by the evidence in the case.

Page 70, Transcript of Record; pages 269-273, Transcript of Record.

Seven documents are required in a reconsigned shipment.

Page 73, Transcript of Record; pages 273-279, Transcript of Record.

Summary VIII Continued.

Undue Discrimination.

We have seen in Section III of this argument that there was no issue of undue discrimination as to localities passed upon by the Commission, nor was any such issue raised in pleadings filed before the Commission or the Court. It is settled by all the authorities collected in Sections V and VIII of this argument that the comparison of divisions of through rates with local rates is insufficient evidence to establish either unreasonableness or undue discrimination.

> The fact that a railway company charges a local shipper more for transporting property between two points on its road than it charges for the same service when the property transported is received from a connecting railroad and is carried under a joint tariff established by two connecting carriers, is insufficient evidence to establish the charge of an undue preference or discrimination under the third section of the act.
>
> Parsons vs. Chicago, etc., R. Co., 63 F. R., 903 (citing Tozer vs. U. S., 52 F. R., 917.)
>
> Chicago, etc., Ry. vs. Osborne, 52 F. R., 912.
>
> I. C. C. vs. L. & N. R. R. Co., 120 F. R., 934, 935.
>
> Poughkeepsie Iron Co. vs. N. Y. Cent. & H. R. Co., 3 I C. R., 248, 253.
>
> St. Louis Hay & Grain Co. vs. Ill. Cent. R. R. Co., 11 I. C. R., 486.

Yet the only evidence offered by defendant in error to show undue discrimination is the comparison of the reconsigning rate of four cents above the rate from Ohio River crossings, with the division of the through rate of two cents above the rate from Ohio River crossings.

Under all the authorities this is insufficient.

The uncontradicted evidence further establishes affirmatively that defendant in error avails itself of the through rate

without discrimination and frequently buys hay at country points beyond East St. Louis and bills it through to destination.

Testimony of Dye, page 154, Transcript of Record.

In this respect it is on a perfect parity with all other shippers, and therefore there is and can be no undue discrimination.

Defendant in error attempted to show that sometimes by payment of $2.00 per car, hay which had been shipped into East St. Louis on a local bill of lading, could be forwarded as a through shipment.

It appeared, however, that it availed itself of this practice and was therefore on a parity with all other shippers, and there could be and was no undue discrimination.

It was also admitted by the President of defendant in error that in every instance, what purported on its face to be a through bill of lading from the Northern line was presented to the Southern line.

"Q. You always took a bill of lading to the Southern that purported on its face to be a through bill of lading, didn't you?

A. Yes, sir."

Testimony of Dye, page 160, Transcript of Record.

This was what Mr. Dye euphemistically called a "corrected" bill of lading. He further admitted that the bill of lading was "corrected" by the Northern line.

"Q. Where would you have that corrected; by whom?

A. By the Northern line."

Page 160, Transcript of Record.

This corroborates the testimony of Mr. Powell to the

effect that Southern Railway had no knowledge of such a practice.

Page 70, Transcript of Record.

The fact is this practice seems to have been an abuse of the through rate, and a fraud upon Southern Railway.

The Commission has held that the abuse of a reconsigning rate does not render it unlawful.

11 I. C. R., 486.

In any event it is quite clear that the practice was availed of by defendant in error as freely as by any other shipper; therefore there was and could be no undue discrimination.

So far as undue discrimination is concerned therefore the situation must be summed up as follows:

(a) There is no issue or evidence as to undue discrimination between localities.

(b) There is no undue discrimination as to through rates because defendant in error has open to it equally with all other shippers through rates from points beyond East St. Louis, and habitually makes use of same, buying hay at country points and billing it through to final destination.

(c) There is no undue discrimination as to the abuse of the through rate, for defendant in error took advantage of it equally with all other shippers.

(d) There is no undue discrimination as to the reconsigning rate for it is open to everyone alike.

(e) The mere comparison of the reconsigning rate with the division of the through rate, which is all the evidence offered, is insufficient to establish undue discrimination.

Different Uses of Terms "Joint Rates," "Local Rates," "Through Rates" and "Divisions."

In the brief filed by defendant in error before the Circuit Court of Appeals comment was made upon the fact that the term "through rates" had been used altogether in the brief of plaintiff in error and that no mention was made of the term "joint rate."

In the Railroad business, as in other trades, there are many technical phrases or terms of art, and it is quite right that words and phrases connected with the subject of Railway Rates should be accurately used, although the infirmities of the English language are such that it is difficult to find a nomenclature which is precise, and not only laymen, but traffic experts and Commissions and Courts, have used the terms connected with this subject somewhat loosely.

The term "through rate" in this argument has been used to designate the rate which carries the two cent division and has been perhaps already too fully described as being that rate which applies to a shipment originating at a point beyond East St. Louis and which passes through East St. Louis to some Southeastern destination on a through bill of lading from the point of origin to the point of destination in Southeastern Territory, under the tariffs providing therefor.

Plaintiff in error's Exhibit No. 2, page 227 of the Transcript of Record, shows one of these tariffs designated "Burlington Route Joint Freight Tariff."

Exhibit No. 3, page 229 of the Transcript of Record, shows a tariff designated "Joint Proportional Freight Tariff."

Exhibit No. 4, page 231 of the Transcript of Record, shows a tariff designated "Joint Proportional Freight Tariff."

Exhibit No. 5, page 233 of The Transcript of Record shows a tariff designated "Joint Freight Tariff."

Exhibit No. 6, page 235 of The Transcript of Record, shows a tariff designated "Joint Freight Tariff."

There are also others.

All these tariffs contain the two cent "division" as part of a "joint rate" and it may have been more accurate to have used that term in this argument.

However, the Interstate Commerce Commission, in the opinion announced by Chairman Knapp in St. Louis Hay & Grain Company vs. I. C. R. R., 11 I. C. Rep. 486, used the term "through rate" in connection with these very rates in this controversy, precisely as we have used it throughout this argument. Likewise Mr. Justice Brewer in announcing the opinion of the Supreme Court of the United States in the case of Parsons vs. C. & N. W. Ry., 167 U. S. 447 uses the term "through rate" just as we have used it in this argument.

It may also be proper to add that the term "local rate" has been used in different senses.

In the Import Rate Case the Supreme Court of the United States uses the word "local" in reference to the rate from New Orleans to San Francisco as contra-distinguished from the rate from Liverpool to San Francisco. In this case the distance between New Orleans and San Francisco is several thousand miles and the route was over several lines of railway.

Nevertheless, this Court uses the word "local" as applicable to that rate.

It might not be improper to add that a charge of $3.70 per hundred pounds was made upon domestic traffic originating at New Orleans and destined to San Francisco, whereas a charge of 80 cents per hundred pounds was made from New Orleans to San Francisco upon imported traffic originating at Liverpool passing through New Orleans des-

tined to San Francisco. The goods, both foreign and domestic, might and did travel in the same cars from New Orleans to San Francisco.

The Commission decided that this constituted an undue discrimination.

The Supreme Court of the United States reversed the Commission, holding in effect that the two charges could not be compared, and that the 80 cents was a division of a rate from Liverpool to San Francisco, whereas the charge of $3.70 was a "local" rate from New Orleans to San Francisco.

T. & P. Ry. vs. I. C. C., 162 U. S., 197.

In the case of C. & N. W. Ry. vs. Osborne, 52 Fed., Mr. Justice Brewer, in announcing the opinion of the Circuit Court of Appeals for the Eighth Circuit, uses the term "local tariff" and "local rates" as contra-distinguished from the terms "joint tariff" and states that the distance from Turner to Chicago over the C. & N. W. Ry. is 30 miles, while the distance from Chicago to Cleveland on the Lake Shore Line is 200 or 300 miles. He points out that the Chicago & Northwestern might make a rate of 15 cents for transporting grain 30 miles from Turner to Chicago provided that it be in fact only a reasonable charge for the service although the Lake Shore Company charges no more for transporting it from Chicago to Cleveland, and the fact that the rate on each line is 15 cents for the distances named will not prevent the two companies from making a joint tariff for grain shipped from Turner to Cleveland for 12 cents, "less than the local tariff of either."

In the case of Parsons vs. C. & N. W. Ry., 167 U. S., 447, Mr. Justice Brewer, in announcing the opinion of the Supreme Court of the United States, uses the term "local rate" as applying to rates from stations such as Turner and Blair to Chicago on the line of the Chicago & Northwest-

ern as contra-distinguished from the "through rate" applying from Turner to New York over the Chicago & Northwestern, the Lake Shore and other lines.

In the "Social Circle" case the Supreme Court of the United States uses the word "local" as applying to intrastate traffic as contra-distinguished from interstate traffic, and in the same case it uses the term "local stations" in contra-distinction to "competitive points."

C. N. O. & T. P. Ry. Co. vs. I. C. C., 162 U. S., 184.

The word "local" or "domestic" has been used by the Supreme Court of the United States to indicate intrastate traffic as contra-distinguished from interstate traffic.

Smyth vs. Ames, 169 U. S., 466.
C., M. & St. P. Ry. vs. Tompkins, 176 U. S., 167.
Nor. Pac. vs. Keyes, 91 F. R., 47.

The word "local" as used in an Act of Alabama of 1873, providing that for "local" freight a railroad might charge 50 per cent more for transportation than for freight transported of the same description over the whole line, was held to apply only to freight shipped over part of the railroad between its termini.

Mobile & M. R. Co. vs. Steinor, 61 Ala., 559, 579.

From the foregoing it is clear that in some situations the very same rate may be regarded as a through rate and in other situations it would be regarded as a local rate. For instance, in the Import Rate Case, 162 U. S., 197, the rate from New Orleans to San Francisco was considered by this court under the circumstances of that case to be a "local rate."

It is quite apparent that considering the distance and the fact that at the time the case was tried the haul was over the lines of several carriers, it would under certain circumstances, be properly regarded as a through rate.

It might well happen that in a controversy affecting rates from El Paso to San Francisco as against rates from New Orleans to San Francisco the rate from New Orleans would be regarded as a through rate instead of a local rate, although when the same rate from New Orleans to San Francisco came up in connection with the rate from Liverpool to San Francisco through New Orleans this court had no hesitation in calling it a "local rate."

All of this goes to show the vital importance in this case of a finding of fact or a conclusion of law as to the correct designation and character of the rates involved in this controversy.

In the case at bar a great deal depends on whether or not the reconsigning rate is to be considered a "local rate" or a "through rate."

A great deal depends on whether or not the two cents charge is to be considered a "division" of a through rate.

Indeed, this is the turning point in the case.

Yet the Commission has never addressed itself to this matter and plaintiff in error is entitled to its opinion in the first instance.

The Circuit Court refused to be governed by the uncontradicted and undisputed evidence on this point.

The judgment of the Circuit Court of Appeals affirming the judgment of the Circuit Court should, therefore, be reversed.

Respectfully submitted,

EDWARD C. KRAMER.
CLAUDIAN B. NORTHROP.

APPENDIX.

Defendant in error contends that we are wrong in our view that the decision of the Commission in the case brought before it by defendant in error decided subsequently to the case at bar conflicts with the decision of the Commission in the case at bar. Our view is that this subsequent decision of the Commission is conclusive in our favor and we print the opinion of the Commission in full for the convenience of this Court and for the purpose of establishing that we are right in our construction of this opinion.

This decision of the Commission was announced by Chairman Knapp and is reported under the name of St. Louis Hay & Grain Company vs. The Illinois Central Railroad Company and The Mobile & Ohio Railroad Company, 11 I. C. Rep., 486, and reads in full as follows:

"No. 811.

THE ST. LOUIS HAY & GRAIN COMPANY

vs.

THE ILLINOIS CENTRAL RAILROAD COMPANY
AND
THE MOBILE & OHIO RAILROAD COMPANY.

Decided December 20, 1905.

The service of defendants in handling reconsigned hay at and from East St. Louis is more expensive as a general rule, if not invariably, than the service performed in case of shipments through East St. Louis, while the privilege of reconsigning hay from that point at a charge less than the established local rate is of substantial value to dealers in that city. *Held*:

1. The fact that through rates are less than the sum of in and out rates is not of itself a valid ground of objection, nor is it unlawful for defendants to maintain reconsignment rates which are higher in some cases than their proportions of through rates.

2. The fact that the reconsignment rate is sometimes the same as the proportion of the through rate does not warrant an inference of illegal conduct or support a charge of unjust discrimination.

Jas. W. Dye for complainant.
Perkins Baxter for defendants.

REPORT AND OPINION OF THE COMMISSION.

KNAPP, *Chairman*:

Discrimination in rates on hay is alleged in this case, and the following facts are found:

The complainant is a corporation existing under the laws of Illinois, having its principal office at St. Louis, Mo., and is quite extensively engaged in the business of buying, shipping and selling hay. Its purchases are made on the market in East St. Louis and at various points of origin in Illinois, Missouri, Kansas, Iowa and Indian Territory and largely in the first named State and the principal places of sale are cities and towns, south of St. Louis, in the Mississippi Valley and territory east thereof. The destination points referred to for illustration and comparison are Memphis, Mobile and New Orleans.

The defendants are severally interstate carriers by rail and as such subject to the act to regulate commerce. The Illinois Central system includes lines from East St. Louis to Memphis and to New Orleans. The Mobile & Ohio extends from East St. Louis to Mobile. The latter road with its connections also carries hay from East St. Louis to Memphis and New Orleans, and the rates to these destinations are the same by both routes.

The hay in question comes in the first instance to East St. Louis, where a considerable part of it is sold for local use or for re-shipment. In some instances, or from some points of origin, there are through rates to southern destina-

tions which are divided between the lines north and the lines south of East St. Louis as they may agree. More frequently, however, it appears that no through rates are provided, but the hay comes to East St. Louis on a local rate to that point and, if carried beyond, takes the rate applicable in such cases. This is known as a reconsignment rate and is invariably the same to a given destination without regard to the point of origin, that is, without regard to the local rates paid to East St. Louis. The reconsignment rate to Memphis is 10 cents in all cases, and to Mobile and New Orleans 17½ cents. These respective rates apply to all "common point" territory.

There is also a local rate from East St. Louis to Memphis of 12 cents, and to Mobile and New Orleans of 20 cents, but as no hay originates at East St. Louis these local rates are seldom used.

Now, complainant asserts that on through shipments from points of origin to Memphis the carriers south of East St. Louis get 10 cents as their proportion of the through rate, which is exactly the same as their reconsignment rate, whereas on through shipments to Mobile and New Orleans the carriers south of East St. Louis accept 16 cents as their proportion of the through rate, while maintaining a reconsignment rate of 17½ cents to those points. Complainant also says that in cases where no through rates to Memphis are published, but the hay is billed and carried as a through shipment without reconsignment at East St. Louis, the carriers south of that point charge and accept their reconsignment rate of 10 cents. In other words, according to complainant, when hay moves to Memphis the total charge is the same whether it is transported as a through shipment or carried locally to East St. Louis and there reconsigned, whereas in case of hay moving to Mobile and New Orleans the through rate is 1½ cents less than the local rate to East St. Louis plus the reconsignment rate from that point. Stated in another way, complainant in effect avers that there is a reconsignment charge at East St. Louis of 1½ cents on hay destined to Mobile and New Orleans, and no reconsignment charge on hay destined to Memphis, although the conditions and service at East St. Louis are the same in one case as in the other. This is the discrimination com-

plained of which is alleged to be an undue preference of Memphis as compared with Mobile and New Orleans, and to give to the through shipper from points of origin an undue advantage over the dealer who buys and reships at East St. Louis.

It will be observed that the complaint is based upon the averment that on through shipments to Memphis the defendants receive as their share of the total charge the same amount as their reconsignment rate from East St. Louis, and that on through shipments to Mobile and New Orleans they accept as their share 1½ cents less than the reconsignment rate. In other words, it is aserted in substance that in no case is there any difference between the through rate and the sum of the in and out rates when the destination is Memphis, while in every case there is a difference of 1½ cents when the destination is Mobile or New Orleans.

The difficulty with this contention is that it is not sustained by the proofs. In very many cases, if not generally, the fact appears to be otherwise. The defendants explained in detail their divisions of through rates with the several lines which bring hay to East St. Louis, including their maximum and minimum divisions with each line, and no attempt was made to dispute the correctness of their statements in that regard. These divisions show a considerable variation and while ordinarily less than the reconsignment rate are sometimes a little more. Particular instances were given where the net results were more favorable to the defendants in the case of through shipments than in the case of reconsigned shipments to the same destination.

It appears from this testimony that the maximum proportion of through rates to Memphis received by the Illinois Central is 10.3 cents, the minimum 7 cents. Its maximum proportion of through rates to New Orleans is 18.1 cents, its miminum 15 cents. The *average* proportion of the Memphis rate received by that company was stated to be 8.6 cents; and of the New Orleans rate 16.5 cents. Analysis of the divisons received by the Mobile & Ohio would show, as we understand, substantially the same figures.

The complaint in this case names three places, Mendon, Coatsburg and Camp Point, local stations in Illinois on the Burlington system. There are through rates from those

points to New Orleans, perhaps to Mobile, but not to Memphis. It is true that the defendants' proportion of these through rates is 16 cents, or 1½ cents less than their reconsignment rate; and there appear to be a number of other points of origin having through rates to Mobile and New Orleans of which the defendants' proportion is also 16 cents.

On the other hand, there are numerous through rates to these southern destinations of which the proportion received by the defendants varies, as above stated, from 15 cents to 18.1 cents. While the exact fact cannot be determined from the record, it seems probable that a large portion of the hay carried on through rates to Mobile and New Orleans pays the lines south of East St. Louis from a cent to a cent and a half less than their reconsignment rate from that point.

On hay carried to Memphis the difference in most cases is apparently not so great between the reconsignment rate of 10 cents and the proportion of the through rate. This would naturally be so as the distances and rates are materially less than to Mobile and New Orleans. While the defendants' proportion of through rates to Memphis range from 7 cents to 10.3 cents, the proportion from some points of origin is the same as the reconsignment rate and perhaps approximates that rate on a considerable part of the actual through shipments to Memphis. In this connection it may be observed that through rates to Memphis from given points of origin appear to be less common than from the same points to Mobile and New Orleans. Where through rates are not provided the traffic would ordinarily move to East St. Louis on the local rate and be forwarded on the reconsignment rate, as that combination would give the lowest through charge available to the shipper.

The defendants profess willingness to join in through rates to Memphis in all cases where the divisions allowed to them are satisfactory. In effect they offer their reconsignment rate as an acceptable basis of through rates with any northern line desiring to make the arrangement. Their share at present where through rates are in effect, is seldom more, and then only a trifle more, than the reconsignment

rate; it is often less and materially less than that rate. The occasional instances in which their share of a through rate is the same as the reconsignment rate appear to be accidental, and do not indicate any improper design or unlawful action. Through rates are matters of voluntary agreement between connecting carriers and it is not the fault of defendants that through rates to Memphis are not more generally provided.

The complainant lays much stress upon the alleged fact that the reconsignment rate has been frequently accepted on through shipments from points where there are no through rates to Memphis. This appears to have occurred in some cases, and perhaps in quite a number of cases. It ought not to have happened at all. Such an application of the reconsignment rate was clearly unwarranted and illegal. In the absence of a through rate each road participating in the carriage of a through shipment is bound to charge its local rate, since in such case the lawful through rate is the sum of the local rates. The defendants concede this fully, asserting at the same time that any such use of the reconsignment rate was the ignorant or negligent act of subordinates, which was wholly without the sanction or knowledge of their superiors, and that it would not thereafter be permitted. We see no reason to doubt the truthfulness of this declaration, and therefore assume that the lawful rate is now always applied.

In this connection, however, the defendants further say that in all cases where the reconsignment rate was improperly used, if that has happened, they would have been entirely willing to join in through rates yielding them the same amount they actually received, and that they are not to blame because such through rates were not available. In other words, it is insisted that complainant was not harmed by this wrongful application of the reconsignment rate, since in no case did it result in lower aggregate charges on a through shipment than the through rate which any originating line was at all times free to establish; and this appears to be a reasonable inference from all the facts and circumstances of the situation. While any misuse of the reconsignment rate, whenever or however it may have occurred, is a proper subject of condemnation, we do not per-

ceive that complainant has been injured by the misuse shown or that the evidence in that regard has any material bearing upon the question at issue in this proceeding.

Hay is shipped in large quantities to and through East St. Louis which is an important market for that commodity. While a considerable amount is purchased at local stations in the States named, it would seem that the greater part is consigned to commission merchants who sell it upon inspection in the car in which it arrives at that place. Some of it is bought for local consumption there and at St. Louis. Of the total amount handled at East St. Louis and carried to points beyond, it is estimated that thirty per cent moves on through rates from origin to destination, without unloading or breaking bulk; the other seventy per cent is transported to East St. Louis on the local rates of the several lines originating the traffic. Some of this is sent south in the cars in which it is received. Generally, however, when destined to southern territory, the hay is taken to a warehouse and there unloaded for the purpose of assorting, grading and reshipping.

As a rule the lines carrying hay to East St. Louis do not extend further south, while the southern lines for the most part terminate at that point. The Illinois Central operates lines north as well as south of East St. Louis but apparently brings very little hay to that market. In some instances there is physical connection between the northern and southern lines, but more frequently an intermediate belt line or switching road is employed to effect the transfer. While the conditions are somewhat complicated, as was shown in a former case brought by this complainant, a detailed description is not deemed necessary in the present proceeding. It is sufficient to say that, generally speaking, the service rendered in handling reconsigned hay is materially greater and more expensive than is required in cases of through shipment. As regards time and cost, delivery of local shipments by an in-bound road to a warehouse is practically the same as delivery of through shipments to a connecting line; but a separate service is performed, involving substantially equal expense, when the reconsigned shipment is moved from the warehouse to the line which transports it to destination. In

short, there is frequently and perhaps ordinarily twice as much switching in one case as in the other. The customary payment for switching a loaded car is $2.00; empty cars appear to be switched without charge.

As above stated, this reconsigned hay is carried at fixed rates provided for that purpose which are lower than local rates from East St. Louis and do not depend upon the origin of the traffic. To secure a reconsignment rate the shipper is required to furnish evidence by expense bills that the hay forwarded, or an equivalent tonnage of that article, has paid a local rate to East St. Louis. As the volume of hay currently received at that point exceeds materially the amount reshipped, on account of the large local consumption, there is usually if not always a surplus of expense bills and consequently no great difficulty in meeting the condition on which reconsignment rates are allowed. In point of fact these rates are applied to practically all reshipments.

Without entering upon a detailed comparison it may be taken as generally true that the through rate from a given point of origin to either Memphis or New Orleans is less than the local rate to East St. Louis plus the reconsignment rate from that point; and this accords with a rate-making rule of extensive and common application.

Where through rates are in effect the proportions of the lines north of East St. Louis are often the same as their local rates, but there are numerous instances in which such proportions are less than the local rates. The proportions of the southern lines are sometimes but not usually the same as their reconsignment rates; occasionally they are greater but more frequently they are less, as has already been explained.

The territory in which this hay is produced is very large and a number of lines bring it to East St. Louis. The points of origin are numerous and at greatly varying distances from that market. The territory of sale is likewise extensive and served by several lines. Under these circumstances differing divisions of through rates would naturally occur. Indeed, we can understand that like or uniform divisions would be impracticable, unless the through rates were simply the combination of local rates. As above observed, through rates are matters of voluntary arrangement and may ordinarily be divided as the interested lines agree.

Conclusions.

The fact that through rates are less than the sum of in and out rates is not of itself a valid ground of objection. In deciding the former case the Commission said:

"It is well understood that a through rate may properly be less than the sum of the locals to and from a divisional point. The mere fact, therefore, that these defendants make in connection with northern lines a joint rate on hay from points of production to points of consumption through East St. Louis which is less than the rate into that point added to the rate out does not establish the illegality of any of the rates involved."

St. Louis Hay & Grain Co. vs. Mobile & O. R. Co., *et al., ante,* 101.

Nor is it unlawful for the defendants to maintain reconsignment rates which are higher in some cases than their proportions of through rates. The service of the carriers in handling reconsigned hay is more expensive as a general rule, if not invariably, than the service performed in cases of through shipment, while the reconsignment privileges in question must be of substantial value to the dealers at East St. Louis. In no instance shown does the difference appear to be unreasonable or otherwise in violation of the regulating statute. The circumstance that the reconsignment rate is sometimes the same as the proportion of the through rate does not warrant an inference of illegal conduct or support the charge of unjust discrimination. Aside from the misuse of the reconsignment rate as stated in the findings, which is not likely to be repeated, we are unable to sustain the complainant's contention either as regards the facts or the law applicable thereto.

An order will be made dismissing the complaint."

3

FILED.
JAN 19 1909
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1908.

SOUTHERN RAILWAY COMPANY,
Plaintiff in Error,
vs.
ST. LOUIS HAY AND GRAIN COMPANY,
Defendant in Error.
No. 104.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

STATEMENT, BRIEF AND ARGUMENT OF DEFENDANT IN ERROR.

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Counsel for St. Louis Hay and Grain Company, Defendant in Error.

St. Louis Law Printing Co., 311-315 Locust. Bell, Main 1819

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IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

STATEMENT, BRIEF AND ARGUMENT OF DEFENDANT IN ERROR.

STATEMENT OF CASE.

This suit is instituted under Section 16 of the Act to Regulate Commerce to enforce an order made by the Interstate Commerce Commission requiring, among other things, the plaintiff in error to pay to the defendant in error $1,572.08 by way of reparation for unlawful charges exacted for the transportation of hay shipped by defendant in error between June 1, 1903, and February 1, 1905, over the lines of railway of plaintiff in error from East St. Louis, Illinois, to points in the territory south of the States of Ohio and Kentucky and east of the Mississippi River, known as and called Southeastern territory. In

the Circuit Court a jury was waived in writing by stipulation of the parties and the case was tried by the Court without the intervention of a jury.

Upon the trial in the Circuit Court, the defendant in error in the first instance introduced the order and report and opinion of the Interstate Commerce Commission, together with the pleadings before the Commission and the stipulation in writing signed by the parties to this suit, as making out a *prima facie* case, pursuant to the requirements of the Act to Regulate Commerce. Thereupon, the plaintiff in error called numerous witnesses and introduced documentary evidence, in defense, and following this, the defendant in error in rebuttal called numerous witnesses and also introduced documentary evidence, as appears in the printed record and as hereafter referred to in the argument.

The plaintiff in error in its statement made in brief filed in United States Circuit Court of Appeals contended that it introduced evidence in the Circuit Court conclusively establishing propositions of fact from 1 to 8, inclusive. We desire to controvert this contention and to deny this statement of plaintiff in error.

By the written stipulation of parties to this suit, filed in the Circuit Court, the plaintiff in error, among other things, admits that the reparation for which this proceeding is instituted, pertains to shipments of hay made by defendant in error between June 1, 1903, and February 1, 1905, from the City of East St. Louis to points outside of the State of Illinois and east of said State of Illinois, and the rates paid as freight on said shipments are as found by the Interstate Commerce Commission in its decision filed as an exhibit to the petition of the defendant in error in this suit. Pages 34 and 35 of Printed Record.

By its answer filed before the Interstate Commerce Commission, the plaintiff in error admitted that it had adopted and maintained in force upon its lines of railway, schedules of rates and charges wherein and whereby it was provided that the charges exacted for transporting hay in carloads over its lines from East St. Louis to Southeastern points, should be two cents per 100 pounds in addition to the regular established rates for transporting hay in carloads from Cairo, Illinois, to said Southeastern points, when the shipments originated at points on railroads other than that of plaintiff in error, and were not reconsigned at East St. Louis, and four cents per 100 pounds in addition to such established rates, when the shipments were reconsigned at East St. Louis, and that the two cents per 100 pounds discrimination thus made by plaintiff in error, was for the privilege of reconsignment at East St. Louis, and also further admitted that it, plaintiff in error, exacted for the transportation of hay four cents per 100 pounds in addition to such established rate between Cairo and said Southeastern points, from and of the defendant in error for shipments made from East St. Louis while it contemporaneously transported in carloads hay that was not reconsigned at East St. Louis for other shippers and between exactly the same originating and destination points, for two cents per 100 pounds in addition to such established rate between Cairo and said Southeastern points.

Paragraphs 3 and 4 of petition of defendant in error before Interstate Commerce Commission, Printed Record, pp. 4, 5 and 6;

Paragraphs 3 and 4 of answer of plaintiff in error thereto, pp. 25 and 26, Printed Record.

Upon the trial in the Circuit Court, the Court made the following special findings of fact in addition to its general judgment, to-wit:

1. Large quantities of hay produced in territory east, north and west of East St. Louis are consumed in Southeastern territory and much of it is carried through the East St. Louis gateway and passes over defendant's lines of railway from East St. Louis to points south of the Ohio River. With the exception of the Illinois Central, defendant's lines terminate in East St. Louis, and generally, also, lines of railway over which the hay is carried from said producing points to East St. Louis terminate at that point.

2. For the transportation from East St. Louis to said Southeastern points, defendants apply a proportional rate which is 2 cents per hundred pounds greater than the rate to said Southeastern points from the Ohio River, if the hay is not unloaded at a warehouse in East St. Louis regardless of whether or not the hay is shipped locally to East St. Louis or through billed from the point of origin to the points of final destination, and regardless of provisions in their tariffs concerning through billing, but if the hay is unloaded at a warehouse in East St. Louis defendants exact for the transportation thereof from East St. Louis to said Southeastern points, a rate which is 4c per hundred pounds greater than the rate from the Ohio River to said Southeastern points.

3. Complainant operates two warehouses at East St. Louis and most of lhe hay it handles it purchases on the track at East St. Louis, unloads, inspects, assorts and reloads at said warehouses, and sells at Southeastern points, in competition with other hay dealers who do not unload the hay at East St. Louis. In such competition complainant is therefore prejudiced to the extent of two cents per hundred pounds by defendants' method of applying rates of transportation as aforesaid. Defendants claim that this 2 cents difference in rates is justified by difference in cost to them between the two kinds of transportation services they are called upon to perform.

4. At East St. Louis transfers of loaded cars from the Northern to the Southern lines and transfers of empty cars from the Southern to the Northern lines is generally made by a connecting railroad company, and the charge made by that company for such service is

$4.00 per car, when the hay is unloaded as aforesaid, but only $2.00 per car when the hay is not so unloaded, and in each instance this charge is paid by the carrier which hauls the hay South from East St. Louis.

5. When the hay is unloaded as aforesaid an empty car must be furnished for the shipment by the carrier which hauls the hay South from East St. Louis, and the service of so furnishing is fairly worth from 40 to 60 cents per car.

6. The car is in use from 2 to 3 days longer when the hay is unloaded as aforesaid than when it is not so unloaded, and a fair compensation for such use is 20 cents per day.

7. When hay is unloaded and reloaded at warehouses as aforesaid, the time consumed in doing the work averages from 6 to 8 hours, but the expense of such unloading and reloading is borne entirely by the shipper.

8. Shipments of hay to which the rate of two cents per 100 pounds above the rate from the Ohio River is applied as aforesaid, and which are not unloaded at East St. Louis warehouses are frequently transferred from one car to another in the railroad yards at East St. Louis either because cars in which the hay is shipped to East St. Louis from the North are out of repair, or because the Northern lines are not willing to allow their cars to go South from East St. Louis. The expense of such transfer is from $1.25 to $1.50 per car, and this expense is borne entirely by the carrier which hauls the hay South from East St. Louis.

9. The transfer charge of $4.00 per car above mentioned was formerly $3.00 per car, and the transfer charge of $2.00 per car above mentioned was formerly $1.50 per car.

10. The weight of hay in cars shipped as aforesaid from East St. Louis to Southeastern points is from 1,000 to 2,000 pounds greater when the hay is reloaded at East St. Louis warehouses than when it is not so reloaded. This is an advantage in favor of reconsigned hay.

11. Cars from the North, after being unloaded at the warehouses as aforesaid, are frequently reloaded for the South, thus avoiding expense to the Southern line of placing an empty car and subtracting perhaps a day from the additional time of car service.

12. That taking everything into account the average additional expense to Southern lines in case of reconsigned hay will not exceed that of direct through shipments by more than $2.00 to $2.50 per car, which is equivalent on the average loading of hay about one cent per hundred pounds.

13. Much of the hay which actually passes through East St. Louis might reach its Southern destination via other gateways. Hay grown in different sections also competes via these other gateways in the South with that which does or might pass through East St. Louis. These gateways are Cincinnati, Louisville, Evansville, Cairo, Memphis, Nashville and perhaps others. The testimony showed that at all these points hay could be stopped off, unloaded and treated as the complainant handles its hay at East St. Louis, without the imposition of any charge in addition to the through rate. The testimony showed that these markets all competed with East St. Louis, but the force of that competition did not appear.

14. That complainant actually paid to the Southern Railway Company on reconsigned shipments of hay, at the rate of 2 cents per hundred pounds, the difference between the reconsigning rate and the rate on hay not reconsigned, the sum of $3,144.17.

Pages 29–31 inclusive Printed Record.

And the defendant in error contends that such said findings of fact by the Court, and each and every one of the same, are sustained by the evidence introduced upon the trial in the Circuit Court.

The assignments of error of the plaintiff in error in this Court are in substance the same as the assignments of error by the plaintiff in error in the United States Circuit Court of

Appeals. Originally there were sixty-eight assignments of error in the Circuit Court of Appeals and here the number has been increased to seventy-six. Commencing with the third assignment and ending with the seventy-second, the errors assigned are in substance the same as those in the Circuit Court of Appeals. Plaintiff in error in its brief filed in the Circuit Court of Appeals summarized its assignments of error there under six separate heads. For convenience of the Court and counsel we will follow that summary in our brief and argument, negativing in each instance the contention of plaintiff in error and adding to this summary another covering the additional assignments made in this Court.

BRIEF OF ARGUMENT.

I.

The Court did not err in admitting evidence offered on behalf of the defendant in error, and in overruling motion to exclude testimony from the consideration of the case.

II.

The Court did not err in overruling and denying motion offered by plaintiff in error at the close of all the evidence to remand the case to the Interstate Commerce Commission.

III.

The Court did not err in overruling and denying motion of plaintiff in error offered at the close of all the evidence for the Court to find the issues in favor of the plaintiff in error.

IV.

The Court did not err in refusing to hold as law the 4th, 7th, 9th and 19th propositions of law offered by the plaintiff in error and in modifying propositions of law 6th and 18th offered by plaintiff in error.

V.

The Court did not err in rejecting and refusing to find the said findings of fact offered by plaintiff in error and substituting its own findings of fact.

VI.

The judgment of the Court is not contrary to the undisputed and uncontradicted evidence in the case and is not contrary to the law in the case, and the Court did not err in rendering judgment in favor of defendant in error and against plaintiff in error.

VII.

The first, second, seventy-second, seventy-third, seventy-fourth, seventy-fifth and seventy-sixth assignments are not well assigned and are not sustained by the record.

I.

The Court did not admit improper, incompetent and irrelevant evidence offered on behalf of the defendant in error, and did not err in overruling motion to exclude testimony from the consideration of the case.

It has been the contention of plaintiff in error that the Circuit Court below erred in admitting in evidence the report and opinion of the Interstate Commerce Commission, the contention being that said report and opinion did not state the issues and facts pertaining thereto, as required by Section 14 of the Act to Regulate Commerce.

In said Section 14 the duty of the Commission in this regard is prescribed as follows:

> "Section 14. That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commission are based, together with its representation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured, and such findings so made, shall thereafter in all judicial proceedings be deemed *prima facie* evidence as to each and every fact found."

In order to ascertain what the issues were in the case at bar when before the Commission, it will be necessary to examine the pleadings of the parties before the Commission.

The body of the petition of the St. Louis Hay and Grain Company filed with the Interstate Commerce Commission, which will be found at pages 4 and 5 and 6 of the printed record, is as follows (not including paragraphs 1 and 2, which are merely descriptive of the parties):

"III. That defendants have adopted and maintain in force upon their respective lines of railway schedules of rates and charges wherein and whereby it is provided that the charges enacted for transporting hay in carloads over said lines, respectively, from East St. Louis to said Southeastern points, shall be 2 cents per 100 pounds in addition to the regular established rates for transporting hay in carloads from Cairo, Illinois, to said Southeastern points, when the shipments originate at points on railroads other than those of defendants and are not reconsigned at East St. Louis, and 4 cents per 100 pounds in addition to such established rates when the shipments are reconsigned at East St. Louis; that is to say, 2 cents per 100 pounds is exacted in each instance by defendants, respectively, for the privilege of reconsignment at East St. Louis.

IV. That complainant made shipments of hay in carloads over defendants' lines of railway as described in schedule A hereto attached and made a part hereof, on or about the dates mentioned in said schedule, from East St. Louis to said Southeastern points; that said shipments were reconsigned at East St. Louis; and that defendants exacted for the transportation thereof, as described, in said schedule, 4 cents per 100 pounds in addition to such established rates between Cairo and said Southeastern points, while they contemporaneously severally transported, in carloads, hay that was not reconsigned at East St. Louis, for other shippers and between exactly the same originating and destination points, for 2 cents per 100 pounds in addition to said established rates between Cairo and said Southeastern points.

V. That the cost to defendants, respectively, in each instance, of transporting such shipments from East St. Louis to said Southeastern points, is the same whether the shipments are reconsigned at East St.

Louis or not; that the higher transporation charge hereinbefore described is unreasonable; and that by reason of the premises each of said defendants has subjected, and still is subjecting, complainant and its traffic to the payment of unreasonable and unjust rates of transportation and to undue and unreasonable prejudice and disadvantage, and has given, and still is giving, to said other shippers and their traffic undue and unreasonable preferences and advantage, in violation of the provisions of the Act to Regulate Commerce, particularly Sections 1, 2 and 3 thereof.

Wherefore complainant prays that said defendants may severally be required to answer the charges herein; that after due hearing and investigation an order be made requiring each of said defendants to cease and desist from the aforesaid violations of said Act to Regulate Commerce, and pay to complainant such a sum of money by way of damages as in view of the evidence to be adduced herein, the Commission may deem complainant entitled to; and that such other and further order or orders may be made as the Commission may consider necessary in the premises and complainant's cause may appear to require."

Pages 4 and 5 and 6, Printed Record.

The body of the answer of the defendant Southern Railway Company to said petition of the St. Louis Hay and Grain Company as filed by the plaintiff in error, verified by its fifth vice-president, is as follows:

III.

"It admits the allegations contained in paragraph III of said complaint.

IV.

It has no information or knowledge sufficient to form a belief as to the truth of the allegations contained in the fourth paragraph of said complaint in so far as same relates to various shipments made by complainant but in so far as said allegations refer to its tariff for reconsignment, this respondent admits same.

V.

This respondent denies the allegations contained in paragraph V of said complaint.

Further answering paragraph V of said complaint this respondent alleges that the reconsignment privilege allowed at St. Louis and East St. Louis involves greater cost to this respondent and other railroad companies in the handling of said traffic than is incident to through shipment of same. For with reference to traffic which is reconsigned there is additional switching, greater delay of cars, extra expense in maintenance of clerical force required by taking up the expense bills of the carrier, bringing the traffic to East St. Louis, the issuance of new bills of lading, new waybills, etc., there is also extra expense involved in reloading and also the increased probability of congestion in the freight yards, etc.

Further answering said paragraph this respondent alleges that the charge of reconsignment, is in all cases, practically one cent less than the rate from East St. Louis proper to the territory described in the complaint as 'Southeastern points', and that this privilege of reconsignment is accorded to complainants and others at East St. Louis at a rate invariably less than the local shipper at East St. Louis would be called upon to pay for the transportation of hay originating at East St. Louis and destined to said 'Southeastern points'.

It is true that the reconsignment privilege at East St. Louis is granted upon the condition that a somewhat greater rate shall be charged than the through rate from the point of origin to the point of destination when reconsignment is not availed of but the benefits to the shipper and the additional expense and trouble entailed upon the carriers fully justify the slight additional charge." 25 26

Pages [illegible] and [illegible], Printed Record.

Sections 1 and 2 of the petition and Sections 1 and 2 of the answer filed before the Commission are not included in the above quotations, but said sections are simply descriptive of the parties and concerning the matters alleged in paragraphs

1 and 2 of the petition and of the answer, there is not and never has been any controversy. All questions concerning the shipments made to which the reparation awarded by the Commission applies and the dates when same were made is conclusively settled by the stipulation filed in the cause signed by counsel for both parties, and which is as follows (omitting heading and signatures):

> "It is hereby stipulated and agreed by and between the parties to the above entitled suit that a jury be and the same is hereby waived and that the said cause shall be tried by the Court.
>
> It is further stipulated and agreed that the petitioner may make any proper and competent amendment to his petition or to the exhibits thereto before the commencement or during the trial of the cause and that the defendant may make any proper and competent amendment to its answer before the commencement or during the trial of said cause, so that the issues involved in the case may be fairly presented to the Court.
>
> It is further agreed by and between the parties that the petitioner St. Louis Hay and Grain Company is a corporation organized under the laws of the State of Illinois, with its principal office in the City of East St. Louis in the said State of Illinois and in the Eastern District of the said State of Illinois; that the reparation for which this proceeding is instituted pertains to shipments of hay made by the petitioner between June 1st, 1903, and February 1st, 1905, from the City of East St. Louis to points outside the State of Illinois and east of said State of Illinois, and that the rates paid as freight on said shipments are as found by the Interstate Commerce Commission in its decision filed as an exhibit to the petition of the petitioner in this suit.
>
> It is further stipulated and agreed that upon the trial of this cause either party shall have the right to read in evidence the statements of witnesses made before the Interstate Commerce Commision, as shown by the transcript of the evidence taken upon the hearing before said Commission, the introduction of such state-

ments of said witnesses to be subject to the objection of the opposite party, based upon any valid or legal objection to the introduction of same."

Pages 34 and 35, Printed Record.

It will thus be seen that every act complained of in the petition filed with the Commission was admitted in the answer to said petition made by the Southern Railway Company under oath, and that the only question presented by the pleadings of the parties to the Commission was whether or not the acts complained of constituted a violation of the provisions of the act to regulate commerce, or any of such provisions.

The acts complained of are contained in paragraphs 3 and 4 of said petition and are in substance that while the Southern Railway Company was exacting from complainant for the transportation of hay in carloads from East St. Louis to destinations in the Southeast four cents per 100 pounds in addition to the charge exacted for transporting hay in carloads to said destinations from points on the Ohio River, it exacted from parties other than the St. Louis Hay & Grain Company for the transportion of hay in carloads from East St. Louis to said destinations in the Southeast, only two cents per 100 pounds in addition to the charge exacted for transporting hay in carloads to said destinations from points on the Ohio River. It was also stated in said petition that the cost to the Southern Railway Company in connection with the transportation of said shipments was the same in each instance and that the only difference between the shipments was that while the shipments of the St. Louis Hay & Grain Company were reconsigned at East St. Louis, those of said other parties were not.

After thus stating the matters complained of, the St. Louis Hay & Grain Company, in paragraph 5 of said petition, alleged that the higher rate described was unreasonable and

unjust and that by reason of the premises, the Southern Railway Company was subjecting the St. Louis Hay & Grain Company to undue and unreasonable prejudice and disadvantage and giving to said other parties undue and unreasonable preference and advantage, in violation of the provisions of the act to regulate commerce, particularly sections 1, 2, and 3 thereof.

In said report and opinion the Commission stated the issue in the case as follows:

> "The defendants in this proceeding are the Mobile and Ohio Railroad Company, the Illinois Central Railroad Company, the Louisville & Nashville Railroad Company, and the Southern Railway Company. They all operate lines of railroad leading from East St. Louis, Illinois, to points south of the Ohio River and east of the Mississippi, and all engage in the transportation of various commodities from that point to the territory above defined. The defendants all have in effect what they term proportional rates on hay which is received at East St. Louis by them from their connections. These proportional rates to Southeastern points are two cents above the rate from the Ohio River when the shipment is made directly through East St. Louis, but if the hay is 'reconsigned' at East St. Louis the charge is 4 cents above the Ohio River rate. It is the imposition of this additional two cents for the privilege of reconsigning to which the complainant takes exception."
>
> Page 7, Printed Record.

We respectfully submit that the issue made by the pleadings filed by the parties as above described, could not have been more completely or accurately stated than it was by the Commission as above set forth.

But plaintiff in error contends that this statement of the Commission entirely ignores the principal and most important issue in the case, namely, the reasonableness of the reconsigning rate, and with this contention we wholly disagree. It is

true that the St. Louis Hay and Grain Company said the reconsigning rate was unreasonable, but it gave in its petition its reasons for thinking so. It claimed that the discrimination practiced by the Southern Railway Company was undue, in violation of sections 2 and 3 of the act to regulate commerce and therefore unreasonable in violation of section 1 of said act, and it has never made any other or different claim.

When this case was tried before the Commission, the Southern Railway Company was represented by Mr. Ed Baxter and the two attorneys who now appear for that company in this Court. Mr. Baxter acted as attorney also for the other carriers who were defendants in the case when it was tried before the Commission, and for the purpose of showing what the defendants, including the Southern Railway Company, then understood the issue to be, we quote a statement made by Mr. Baxter, which will be found on page 177 of the printed record and which is as follows:

> "Mr. Baxter: Our contention, your Honor, seems to be misunderstood, one point of it. Our contention is that the difference is justified, not only in the difference in cost to the carrier rendering the service, but also the difference in value to the shipper—that we have a right to consider both."

In connection with the issue thus made and set forth, the Commission made a clear and concise statement of facts, which will be found in said report and opinion, to which the attention of the Court is particularly invited. It does not seem necessary to refer here in detail to the facts stated by the Commission, but we submit that the statement includes every fact which was material and necessary to a proper decision of the matters presented to the Commission for determination. However, plaintiff in error says the statement does not meet the

requirements of section 14 of the act to regulate commerce, as construed by the Court in Western N. Y. & P. R. R. Co. v. Penn. Refining Co., 137 Fed. Rep. 343, and in I. C. C. v. L. & N. R. R. Co., 73 Fed. Rep. 409. In this connection plaintiff in error quotes from the Penn Refining Co. case, as follows:

> "It is fairly to be inferred from the provisions of sections 14 and 16 that the findings of fact were intended to be so arranged and set forth in the report of the Commission that they could be offered as *prima facie* evidence of 'each and every fact found', unaccompanied with extraneous, embarrassing or incompetent matter calculated to confuse or mislead. Int. C. C. v. Louisville & N. R. Co. (C. C.), 73 F. R. 409, 414, 415. While not expressing the opinion that findings of fact even when mixed with incompetent matter should in all cases be excluded, we hold that, if the same be received, the Court should clearly separate and distinguish before the jury the findings of fact from the incompetent matter, and direct that the latter be wholly disregarded."

And also quotes from the Louisville & Nashville case, as below:

> "The fact that the Commission is composed of men of ability and experience, selected with reference to their particular qualifications therefor, and whose entire time is devoted to questions arising under the act, gives to its findings and opinion great weight. But in order that the finding and opinion of the Commission shall have the value intended, it should conform to the purpose of Congress in requiring such proceedings. Its opinion or report should show what the issues in the case are, and what facts it finds in regard to such issues.
>
> "It is not sufficient for the report of the Commission to be made up of mere conclusions with respect either to law or fact. It should make suitable reference to the evidence where there is a conflict in the proof, and show how the Commission settles the disputed fact, or if the evidence in regard to any fact is undisputed, it should be so stated by the Commission.

> "Where, in a given case, it is the duty of the Commission to receive and take into account evidence of certain facts, its failure to do so is error of law. And so, where an issue of fact is raised before the Commission, its failure to dispose of it is an error of law."

With the holding of the Court of Appeals in the Penn Refining Co. case, we have no occasion to quarrel, and are not disposed to do so. If the statement of facts submitted in that case were so mixed with incompetent matter that without proper instructions from the Court it was liable to mislead the jury, and such instructions were not given, the submission was undoubtedly an error, but this holding has no application whatever to the case at bar. In this case, by stipulation of the parties, a jury was waived and the facts were found by the Circuit Court. We do not expect that the attorneys for plaintiff in error would even intimate that the Court before whom this case was tried was incapable of distinguishing between an argument and a statement of fact.

The only other case referred to in this connection is the Louisville & Nashville R. R. Co. case above mentioned. We do not wish to criticise in any manner anything which has been said at any time by any court, but we consider it entirely proper to call the attention of this Court to the fact that the decision in question was written before the courts were well informed concerning the conditions under which the Interstate Commerce Commission labors. The latter portion of one of the paragraphs quoted by plaintiff in error reads as follows:

> "It should make suitable reference to the evidence where there is a conflict in the proof and show how the Commission settles the disputed fact, or if the evidence in regard to any fact is undisputed, it should be so stated by the Commission."

This is the only instance we know of where a Court has intimated that the Commission should include in its report and

opinion an abstract of the evidence, and appears to be an invitation to the Commission to make its report and opinions more lengthy in the future than they have been heretofore. On the other hand, the language of the Supreme Court of the United States in connection with Interstate Commerce Commission cases indicates that the Commission's reports have been somewhat more full of detail than is necessary or advisable.

It is evident that the traffic and other officials of these great railway systems must often testify before the Commission. It is also evident that they would sometimes be interested in minimizing and at other times in making appear large the same element of transportation service, and it might be that in a given case the testimony of such officials would be somewhat in conflict with their testimony on the same point in other cases, while other testimony in that case would tend to show that the testimony of such officials was erroneous. Is it possible that under such circumstances the Commission does not meet the requirements of the act to regulate commerce by simply stating the facts, as from all the evidence in the case they believe them to be, or must they go further, give an abstract of the evidence of the railway officials and accompany it by an explanation as to why the Commission is unable to give full credit to what the officials referred to have said? A mere statement of this proposition appears to us to be its complete answer. Under the law, as it now stands, defendant carriers are free to show in court by any proper evidence that the findings of the Commission are incorrect, and with this they should be satisfied.

Section 1 of the act to regulate commerce, so far as it pertains to transportation charges, reads as follows:

> "All charges made for any service rendered or to be rendered in the transportation of passengers or prop-

erty as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful."

Section 2 provides:

> "That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful."

And the first paragraph of section 3 provides:

> "That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Plaintiff in error appears to think that it would be possible for a carrier to exact rates of transportation which would give to one party undue preference and subject another party to undue prejudice in violation of section 3 without exacting a rate which would be unreasonable and therefore in violation of section 1. We admit that a rate might be unlawful because unreasonable in violation of section 1, and still not be in viola-

tion of either section 2 or section 3, but we are unable to understand how, as connected with the exaction of transportation charges, rates could be in violation of section 3 because of undue preference and undue prejudice, or in violation of section 2 because of unjust discrimination, and yet all the rates compared be entirely reasonable and none of them, therefore, in violation of section 1.

The complaint of plaintiff in error appears to be that the Commission did not undertake to say whether or not the rate exacted by the Southern Railway Company from the St. Louis Hay and Grain Company, disconnected entirely from the surrounding and pertinent circumstances, including the rate contemporaneously exacted from other parties for transportation of the same kind of traffic, between exactly the same points, was reasonable. If the rate complained of was unreasonable, in view of the circumstances under which the St. Louis Hay and Grain Company was compelled to pay it, whether or not it would have been reasonable otherwise, is wholly immaterial and a matter of no consequence whatever.

We have thus shown that every material issue in the case was clearly and accurately stated by the Commission, and this, together with the full and complete findings of fact reported by the Commission, shows there is absolutely no force in the contention of plaintiff in error that the Circuit Court erred in permitting said report and opinion to be introduced as evidence in this case.

Plaintiff in error contends that the Circuit Court erred in permitting testimony to be introduced tending to show that no charge in addition to the through rate from point of origin to final destination was exacted by the Southern Railway Company and other carriers for the privilege of reconsigning hay at Ohio River points and Memphis and Nashville, because the

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petition filed by the St. Louis Hay and Grain Co. with the Interstate Commerce Commission did not charge that the Southern Railway Company and other carriers named as defendants in said petition were subjecting East St. Louis to undue prejudice and giving to other localities undue preference.

In said report and opinion, the Commission, in passing upon this point, said:

> "The testimony tends to show, as already stated, that at other markets this additional service is performed without compensation, but that particular feature of the case is not set forth in the complaint and was only brought out upon the final hearing. It is conceivable that upon a full development of that phase of the matter we might reach the conclusion that the imposition of any reconsigning charge was an undue discrimination against East St. Louis, but our present impression is from what appeared as to conditions at these other markets that the defendants may properly charge for the actual additional expense."
>
> Page 47 of Printed Record.

No. 13 of the findings of fact reported by the Circuit Court in this connection reads as follows:

> "Much of the hay which actually passes through East St. Louis might reach its Southern destination via other gateways. Hay grown in different sections also competes via these other gateways in the South with that which does or might pass through East St. Louis. These gateways are Cincinnati, Louisville, Evansville, Cairo, Memphis, Nashville and perhaps others. The testimony showed that at all these points hay could be stopped off, unloaded and treated as the complainant handles its hay at East St. Louis, without the imposition of any charge in addition to the through rate. The testimony showed that these markets all competed with East St. Louis, but the force of that competition did not appear."
>
> Page 214 of Printed Record.

It therefore appears that neither the judgment of the Commission, nor the judgment of the Circuit Court, was in any

way influenced by the evidence in question, and that would be the presumption of this Court where, as in the case at bar, the judgment of the Commission and the judgment of the Circuit Court are fully sustained by the other evidence introduced. With these remarks we might therefore drop the subject under discusssion, but defendant in error insists that the testimony objected to was clearly admissible, not for the purpose of showing that there was an undue discrimination between East St. Louis on the one hand and Ohio River points and Memphis and Nashville on the other, but for the purpose of proving what the practice of the Southern Railway Company and other carriers was concerning the making of an extra charge for the privelege of reconsignment.

In this case two points of importance have been clearly demonstrated by witnesses of plaintiff in error: First, that cost to the carriers of the transportation service is only one of the elements considered by them when fixing rates of transportation; and second, that competitive and other conditions are about the same at East St. Louis as at Ohio River crossings, such as Cairo, Evansville, Louisville and Cincinnati. In this connection we call the attention of the Court to the testimony of one of the witnesses of plaintiff in error, Mr. J. R. Peachy, which is as follows:

> "Q. It is your understanding that railway rates are very likely to be made by competition between markets and railways?
>
> A. Yes, sir, that is my understanding.
>
> Q. I suppose you undertake to give the different points along your line an equal opportunity to ship to different points, do you not?
>
> A. We do, yes, sir.
>
> Q. How long did I understand you you have been in the passenger [traffic] business in St. Louis?
>
> A. I have been in St. Louis since October 10, 1904.
>
> Q. I take it that it is not always the difference be-

tween two kinds of service that determines the difference you make in rates; that is one of the elements?

A. Do you mean in fixing the rate from the shipping point to destination?

Q. I mean in fixing railroad rates in general; it is not merely—the cost of the service is not the determining factor always?

A. Not always, no, sir. The conditions; market conditions, and the desire to foster traffic, etc., sometimes moves us to make a lower rate on certain articles than really we would like to."

Page 112 of Printed Record.

And the testimony of Mr. Powell was as below:

"The same competitive factors enter into the rate from East St. Louis to Atlanta as from the Ohio River; that is, the competition of commodities, of local markets in the South, and local production in the South, and different means of transportation from other sections of the country. Exactly the same conditions prevail at that shipping point as at others."

Page 65 of Printed Record.

Under these circumstances and in view of the fact that the St. Louis Hay & Grain Company was insisting that it was unlawful for the Southern Railway Company and other carriers to make an extra charge for the privilege of reconsignment at East St. Louis, it was entirely proper for that company to introduce evidence tending to show the practice of such carriers in this connection at points where the conditions were similar to those prevailing at East St. Louis.

II.

The Court did not err in overruling and denying motion offered by plaintiff in error at the close of all the evidence to remand the case to the Interstate Commerce Commission.

It is contended by plaintiff in error that:

"The Court erred in overruling and denying motion offered by plaintiff at the close of all evidence to remand the case to the Interstate Commerce Commission", for reasons as follows:

> "1. Because the issues presented to the Interstate Commerce Commission were not passed upon and determined by said Interstate Commerce Commission.
>
> "2. Because petition filed before the Interstate Commerce Commission by St. Louis Hay & Grain Company in said case, in the fifth paragraph thereof, alleges that the reconsigning rate charged on shipments of hay from East St. Louis to Southeastern points is unreasonable and that by reason thereof the petitioner has been compelled to pay unreasonable and unjust rates for the transportation of hay from East St. Louis to Southeastern points, in violation of section 1 of the Act of Congress to regulate commerce, which said allegation was denied by the defendant in paragraph 5 of its answer filed in said case before the Interstate Commerce Commission, and in addition to said direct denial in same paragraph 5 of defendant's answer, defendant Southern Railway Company alleged that the charge for reconsignment of hay from East St. Louis to Southeastern points is in all cases invariably one cent less than the rate from East St. Louis proper to said Southeastern points.
>
> "Said pleadings directly present the issue of the reasonableness and justness of the said reconsigning rate from East St. Louis to said Southeastern points, which said issue was a material issue and was not passed upon by said Interstate Commerce Commission.
>
> "3. Defendant is entitled, as a matter of law, to have the Interstate Commerce Commission in the first instance pass upon all issues presented, and where the Interstate Commerce Commission fails to pass upon material issues presented to it, it is the duty of the Court

to refer the matter back to the Interstate Commerce Commission to be proceeded in according to law.

"4. Because said Interstate Commerce Commission did not make a report in writing in said case including findings of fact upon which the conclusions of the Interstate Commerce Commission were based as required by law, but instead thereof filed a report made up of mere conclusions, which report failed to show what the issues in the case were, and what facts the Interstate Commerce Commission found in regard to such issues, and because said report failed to make suitable references to the evidence adduced before the Interstate Commerce Commission in regard to the particular questions and issues presented; and because said report failed to show whether or not there was any conflict iu the proof before the Interstate Commerce Commission, and failed to make reference to the testimony taken before it showing how the Interstate Commerce Commission had settled any disputed facts; and because said report failed to state whether or not the evidence in regard to some or any of the issues was undisputed, that is to say, said report of the Interstate Commerce Commission failed to conform to the requirements of the law."

With the exception of what was said by plaintiff in error concerning the local rate from East St. Louis and certain decisions of the courts, we have fully answered in connection with the points made by plaintiff in error under No. 1 of the summary, all the points made by plaintiff in error under No. 2 of the summary. We will therefore not repeat here what we said there, but respectfully request the Court to consider in connection with the matters here in question, what we have said concerning the same points under No. 1.

The local rate from East St. Louis to the Southeast is not now and never has been a matter of importance in this case. The testimony of Mr. Powell clearly shows that so far as shippers of hay from East St. Louis are concerned, that rate is never, or practically never, applied. Mr. Powell's testimony in this connection was as follows:

"Q. Explain to the Court the situation with reference to shipments initial at East St. Louis proper, going to Atlanta?

A. That is really an almost unknown condition, because East St. Louis being such a large hay consuming point, the shipper is always able to secure an expense bill representing an inbound movement to correspond with the movement of the car. He objects, however, to the application of the 29 cent rate from East St. Louis proper to Atlanta, as that shipper not having an expense bill representing a movement of the hay into East St. Louis, whether he brings the hay to East St. Louis by wagon, or brings the hay into East St. Louis by the river, although that mode of transportation is not used very much now. It is only under these conditions that the 29 cent rate would be used. The 29 cent rate primarily applies at the present time to establish a rate from local territory on the Southern Railway and other lines to East St. Louis."

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Under these circumstances it is difficult to see why plaintiff in error encumbered the record in this case by any reference to the local rate applying from East St. Louis.

The decisions referred to by plaintiff in error under No. 2 of the summary are as follows:

Texas & Pacific Ry. Co. v. I. C. C., 162 U. S. 197;
Louisville & Nashville R. R. Co. v. Belmer, 175 U. S. 648;
East Tennessee, Virginia & Georgia Ry. Co. v. I. C. C., 181 U. S. 1, and
Interstate Commerce Commission v. Southern Ry. Co., 105 Fed. Rep. 703.

According to our view, the decisions in the cases referred to have no application whatever to the case at bar. These cases were remanded to the Interstate Commerce Commission for the reason that the Commission, under an erroneous inter-

pretation made by it of the Act to Regulate Commerce failed to consider and pass upon certain evidence submitted by the defendant carriers. That there was no such failure in this case, we believe we have shown conclusively, and if this view is correct, the holdings of the courts in those cases are not applicable here, and therefore the refusal of the Circuit Court to remand this case to the Interstate Commerce Commission for further proceedings was not error, but entirely correct.

III.

The Court did not err in overruling and denying motion of plaintiff in error offered at the close of all the evidence for the Court to find the issues in favor of the plaintiff in error.

One of the contentions of plaintiff in error is that the lesser rates exacted from other parties were in fact divisions of through rates, while the higher rates exacted from defendant in error were in the nature of local rates, and that these two classes of rates cannot be compared for the purpose of proving undue preference and undue prejudice. We assume plaintiff in error intended to say divisions of "joint" rates, because, as we will hereafter show, between divisions of "through rates" and divisions of "joint rates" there is a great difference, and, if such is the contention of plaintiff in error, that contention is squarely in conflict with the record, including statements under oath of the Southern Railway Company's Fifth Vice-President and Traffic Manager, Mr. Powell. The answer of the Southern Railway Company to the petition of the St. Louis Hay & Grain Co., filed with the Interstate Commerce Commission and hereinbefore referred to, was subscribed and sworn to by Mr. Powell, and an examination of said petition and answer will disclose that the Southern Railway Company there admitted that it had adopted and maintained in force upon its line of railway schedules of rates wherein and whereby it was provided that the charges exacted for transporting hay in carloads over said lines from East St. Louis to points in the Southeast should be two cents per 100 pounds in addition to the regular established rates for transporting hay in carloads from Cairo, Illinois, to said Southeastern points when the shipments originated on railroads other than that of the Southern Railway Company and were not reconsigned at East St. Louis, and

four cents per 100 pounds in addition to such established rates, when the shipments were reconsigned at East St. Louis, and that the difference of two cents per 100 pounds between said rates was exacted by the Southern Railway Company in each instance for the privilege of reconsignment at East St. Louis. We think this admission estops the Southern Railway Company from now attempting to prove that the lesser rates mentioned were divisions of joint rates, or anything other than as described in said petition. If the lesser rates were divisions of joint rates, that fact was as well known to the Southern Railway Company at the time it filed with the Commission the answer referred to, as it has been at any time since. Nevertheless, the answer does not contain even an intimation that either of the rates referred to in said petition was a division of a joint rate or other than the tariff of the Southern Railway Company for transporting hay in carloads from East St. Louis to said Southeastern points. But this is not all. In his testimony before the Circuit Court, which will be found on page 87 of the printed record, Mr. Powell was interrogated and made replies as follows:

> "Q. Now, Mr. Powell, I understood you to say, in answer to Mr. Northrup, that in the case of a reconsigned shipment, the Southern Railway Company was in no way connected with it until it was offered for shipment to the Southern going south?
>
> A. That is true as to the 10th street warehouse, yes, sir.
>
> Q. Isn't it also true of what you call a through shipment?
>
> A. Yes, sir.
>
> Q. So there is no distinction there?
>
> A. No distinction. No responsibility for the safety of the shipment, if it came to that.
>
> Q. You become connected with it just the same in both cases?

A. I think you intended to ask the question about the Wiggins Ferry warehouse, because there we do know about that shipment before it is turned over to us.

Q. Just answer the question I ask you. You spoke of this one to which the 2-cent rate is applied.

A. It is not a 2-cent rate. I don't like to have the terms mixed up. He gets a through consignment, from the same point of origin to destination.

Q. Well, you call that a through shipment, don't you?

A. Yes, sir, I call it a through shipment, exactly what it is.

Q. I just want to know whether you call it a through shipment.

A. We do not have a rate of 2 cents; we have a rate of 26 cents; we have a proportional 26-cent rate from East St. Louis to Atlanta."

Page 87, Printed Record.

It will be seen that Mr. Powell is here describing the lesser rate mentioned in the petition filed with the Interstate Commerce Commission by the St. Louis Hay and Grain Company, as aforesaid; that is to say, the rate exacted from East St. Louis to Southeastern points on carload shipments of hay which were not reconsigned at East St. Louis, but he objects to the rate being called a 2-cent rate. By referring to page 66 of the printed record, it will be seen that Mr. Powell also objects to the higher rate mentioned in said petition being called a four-cent rate. His language in that connection is as follows:

"It is not, properly speaking, a four-cent rate at all; is not, properly speaking, a rate at all. It is only a differential."

During the trial of this case in the Circuit Court, counsel and witness, for convenience, referred to the different rates from East St. Louis to Southeastern points as the two-cent rate, the four-cent rate and the five-cent rate, meaning the rate which was made by adding two-cents to the rate from the Ohio River to Southeastern points, that which was made by adding four cents to said Ohio River rate, and that which was

made by adding five cents to the Ohio River rate. At the time the shipments of hay in question were made and to which the reparation in this case applies, the rate on hay in carloads from the Ohio River to Atlanta, which is a point in the Southeast used in this case by way of illustration, was twenty-four cents per 100 pounds. The three rates from East St. Louis to Atlanta were therefore, per 100 pounds, as follows: Local rate, 29 cents; reconsigning rate, 28 cents; and proportional rate applied to shipments of hay which were not reconsigned at East St. Louis, 26 cents.

Mr. Powell's definition of a porportional rate is as follows:

> "A porportional rate has very much the characteristics of what we term a local rate, but it always indicates a prior movement up to the point at which or from which the proportional rate applies, or it contemplates a movement beyond the point to which the proportional rate is said to apply."
>
> Page 52 of Printed Record.

And he distinguishes a proportional rate from the division of a through rate, as below:

> "A divison of a through rate is the proportion of the rate assigned to each one of the carriers participating in that traffic."
>
> Page 52 of Printed Record.

Mr. J. R. Peachy, Assistant General Freight Agent of the Illinois Central Railroad Company, was called as a witness by plaintiff in error, and testified as follows:

> "Q. You have defined a proportional rate. Is there a division of a through rate?
>
> A. My definition was, such a rate as we have on hay when we reconsign it at East St. Louis where our rate is 28 cents, against the division of the through rate, which pays us 26 cents; on the through movement we get 26 cents; that is the division of the published through rate, while on the other hand the 28-cent rate is a proportional rate applied on this hay when we handle it here and reconsign it.

Q. Your tariffs say on this hay reconsignment rate from East St. Luis to Atlanta, would be 4 cents above the rate from the Ohio River?

A. Yes, sir.

Q. Haven't you filed with the Interstate Commerce Commission another tariff wherein you say that the rate from East St. Louis shall be 2 cents in addition?

A. We have.

Q. Do you see any distinction between the divisions made in these two tariffs?

A. You mean difference in revenue to us?

Q. No, sir, is there any difference except the difference in revenue that you can see in these tariffs?

A. I do not know that I can answer that, unless the revenue is involved. There is more than that. There is the extra expense of handling the stuff where it is rehandled here."

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Mr. James W. Dye, president of the St. Louis Hay & Grain Company, testified as follows:

"Q. What are the rates that applied, that were applied from June, 1903, to February, 1905, on shipments?

A. On reconsigned shipments that statement covers 4 cents per 100 pounds over the Ohio River rate.

Q. How long have you been obliged to pay that rate on reconsigned cars?

A. Since June, 1903.

Q. How was it before that?

A. Before that we handled the business through the warehouse in the same manner we do now, reloading from Northern line cars, and also used Northing [Northern] line cars in the same manner we do now, we consigned hay to the South at 2 cents per 100 pounds over the Ohio River rate.

Q. Was that the same rate which was contemporaneously applied on through shipments, as they have been called in this case?

A. Yes, sir, it was.

Q. So that previous to June 1st, 1903, you did not have to pay anything extra on account of it being reconsigned?

A. No, sir. We handled the cars from the warehouse in the same manner we do now."
Page 154 of Printed Record.

And the testimony of Mr. J. R. Lucas, who testified in this case before the Interstate Commerce Commission, was as below:

"Mr. Lucas: Prior to their assessing 2 cents most of my stuff I had billed through and they gave me the privilege of handling at my warehouse and accepting stuff on a proportional rate after I handled it. Then, they allowed me to use the proportional rate the same as any country shipper. I can not remember the date they cut that off. They then made everything through the Southern Freight Association and charged us 4 cents to the river instead of 2 when we furnished them the same identical hay that we did before. It did not make any difference whether we bought it and billed it through to Nashville or bought it on the local market and billed it to Southeastern markets."
Page 173 of Printed Record.

Defendant in error respectfully submits that the statements above referred to conclusively establish that the two-cent rate applied on shipments of hay which were not reconsigned at East St. Louis, and the four-cent rate applied on shipments of hay which were reconsigned at East St. Louis, were horses of exactly the same color, and that the only difference that a railway official, a commission or a court can discover between them, is a difference in size. One is two cents per 100 pounds greater than the other, but both were applied between June 1, 1903, and February 1, 1905, on carload shipments of hay from East St. Louis to points in the Southeast by the Southern Railway Company and other carriers whose lines of railway lead from East St. Louis to the Southeast, and in no instance was any of the carriers, who hauled the hay from points of origin to the junction point of East St. Louis, in any way con-

nected, whether by joint tariff or otherwise, with the two-cent and four-cent rates exacted by the carriers who hauled the hay South from East St. Louis. The two-cent and four-cent rates were wholly made and controlled by the carriers who applied them, and those carriers could have made changes in such rates at any time without even consulting the carriers who hauled the hay from points of origin to East St. Louis.

The fact that neither the Southern Railway Company nor any of the other three carriers who were defendants in this case when it was tried before the Interstate Commerce Commission, where their interstate tariffs were all on file, or supposed to be, and illegal, if they were not, did not attempt to make the defense they are now advancing here, is very significant, indeed, and one we feel certain this Court will take due notice of. Is it possible that after admitting under oath to the Interstate Commerce Commission that it had adopted and maintained in force upon its line of railway a schedule of rates and charges wherein and whereby it was provided that the charges exacted for transporting hay in carloads over its line from East St. Louis to Southeastern points should be two cents per 100 pounds in addition to the regularly established rates for transporting hay in carloads from Cairo, Illinois, to said Southeastern points, when the shipments originated at points on railroads other than that of Southern Railway Company and were not reconsigned at East St. Louis, that the Southern Railway Company can afterwards go before the courts and in the same case say that the rate did not apply from East St. Louis, but applied only from country points, such as Bowen, Ill.? We believe such a holding, especially in a case like the one at bar, would not only be contrary to precedent and in conflict with public policy; it would open wide the door leading to injury and injustice.

Upon the argument of this case in the Circuit Court, counsel for defendant in error called the Court's attention to Mr. Peachy's admission concerning the two-cent proportional rate filed by the Illinois Central Railroad Company with the Interstate Commerce Commission, whereupon counsel for plaintiff in error interrupted and said, you can not hold the Southern Railway Company responsible for tariffs published and filed by other carriers, but he was very soon shown that his position in this regard was untenable. The testimony of Mr. Powell in this connection was as follows:

"Q. Does the Southern Railway alone make these rates?

A. No, sir; we meet the competition of the shore [short] line.

Q. Isn't it a fact that these rates out of East St. Louis are the result of all these different elements?

A. They enter into the situation very largely. When the Southern came into this market it simply put itself in a position to compete with other lines.

Q. In other words, it accepted the rates previously made from this point by other lines?

A. Yes, sir; put itself in position to compete.

Q. Do you in every instance have a through rate from points North on lines north of East St. Louis, on traffic that comes to the Southern?

A. I think we do; it is our purpose to have it so.

Q. If a car should come over some line that you did not have a joint through rate to East St. Louis, and it was designated to go over the Southern from here to Atlanta, would you accept that car in the absence of a joint through rate and defy [apply]—what you call a divisional joint through rate, which is generally applied?

A. Occasionally shipments must necessarily come in that way, but it is not our purpose to have anything of that kind. We met the rate when we came in here; met the rate of competing lines. We did not find out all these things immediately. We have only been here since 1901."

Page 91 of Printed Record.

It will be seen from the above that Mr. Powell admits the Southern Railway Company applied from East St. Louis to the Southeast, rates made by other carriers, and also admits that the Southern Railway Company would so apply such rates even if it were not a party to a tariff, in which the rates were named. Is not this absolute corroboration of the testimony of Mr. Dye and Mr. Lucas above quoted concerning the application of rates from East St. Louis to the Southeast between June 1, 1903, and February 1, 1905, both on carload shipments of hay, which were reconsigned at East St. Louis, and carload shipments of hay which were not reconsigned at East St. Louis?

The plaintiff in error has heretofore contended that the defendant in error is mistaken in assuming that it or any one else was charged for a reconsigning privilege at East St. Louis. We think the record here clearly supports the contention of defendant in error on this question.

In the latter portion of paragraph three of the petition filed with the Interstate Commerce Commission by the St. Louis Hay & Grain Company as aforesaid, the following statement appears:

> "That is to say, 2 cents per 100 pounds is exacted in each instance by defendants respectively for the privilege of reconsignment at East St. Louis."
> Page 5, Printed Record.

In the answer to said petition filed with the Commission by the Southern Railway Company, said company by its Fifth Vice-President, Mr. Powell, admitted under oath every statement contained in said paragraph three of the petition, including the statement that the two cents per 100 pounds discrimination made by the Southern Railway Company between the reconsigned shipments and the shipments which were not re-

consigned, was for the privilege of reconsignment at East St. Louis. Page 25, Printed Record.

The contention of the plaintiff in error that there was no charge for the privilege of reconsignment at East St. Louis cannot be reconciled with the admission contained in the answer under oath made by the plaintiff in error, and counsel for the plaintiff in error are compelled of necessity to contradict the answer of their client if they insist in contending here as in the Court of Appeals that:

> "In the cases in which it appeared that plaintiff in error had accepted a rate of two cents less than the reconsigning rate, the uncontradicted and undisputed evidence showed it was from other carriers and was a division of a through rate and the entire transaction was had with other carriers and not with the shippers at all."

Between a division of a "through rate" and a division of a "joint rate," there is a great difference.

The way plaintiff in error attempted to prove that the two-cent rate applied from East St. Louis to the Southeast was in each instance a division of a joint rate, was by offering in evidence so-called joint tariffs. These tariffs were exhibited by Mr. Powell, but were objected to by counsel for defendant in error, and not one of the tariffs referred to was admitted in evidence, except subject to the objection of defendant in error.

The first joint tariff exhibited by Mr. Powell was headed Wabash Railroad Company and when it was offered in evidence, the following colloquy took place:

> "Q. You have given a joint tariff of the Southern Railway Company showing the rates from Bowen to Louisville?
>
> A. Yes, sir.

Q. Will you file that with the evidence in this case, if you please?

A. Yes, sir.

Mr. Northrup: Would your Honor like to look at that tariff?

The Court: Well, it will be introduced in evidence. I will have an opportunity of looking at it later.

Mr. Farrell: I want to ask Mr. Powell a question or two concerning this tariff. Do you understand that that tariff is now or ever was filed with the Interstate Commerce Commission; a copy of it?

A. I don't suppose it was.

Mr. Farrell: When [Then] we object to it being filed in this case. He admits that the tariff was never filed with the Interstate Commerce Commission.

The Witness: The reason it was not filed was because the Southern Railway Company is not the initial line from Bowen, Illinois, and the Interstate Commerce Commission does not accept tariffs except from the initial line.

Mr. Farrell: My point is that no rate except the legal interstate rate is permissible to be admitted here. That is the point I make.

Mr. Northrup: Suppose we just note your objection, and argue it later on.

The Court: All right. Go on. I will hear it subject to the objection.

A. Part of the question was an instruction to file other tariffs belonging to the same traffic. I therefore file Baltimore & Ohio Southwestern Tariff, I. C. C. Nukber [Number] 4745, applying to grain, grain products and hay from stations on the Baltimore & Ohio Southwestern west of Aurora, Indiana, to points in Southeastern and Carolina territories.

Mr. Farrell: Do you pretend that the Southern Railway Company participated in that particular traffic named in that Baltimore & Ohio Southwestern tariff?

Mr. Northrup: I was just going to ask the witness.

The Court: I will have no [to] notify you to proceed one at a time. Ask your questions, and if there is any objection it can be made. It makes confusion. Pursue the usual order.

Mr. Farrell: I desire, before these are admitted in evidence, to question the witness concerning them.
The Court: You will have an opportunity."
Pages 61 and 62 of Printed Record.

After plaintiff in error had introduced the joint tariffs made exhibits in this case and rested, Mr. Powell was the first witness called in rebuttal by plaintiff in error, and Mr. Powell's evidence concerning the joint tariffs in question was as follows:

"Q. You introduced some tariffs that were called joint tariffs between the Northern and Southern lines, did you?

A. Yes, sir.

Q. Is there an instance where one of these tariffs was issued by the Southern Railway Company?

A. The first tariff which I filed, showing rates from the Wabash Railroad to the Southern, was a tariff issued by the Southern. All the other tariffs I think were also issued, in the sense that we have our numbers on them, but I do not think the original publication was ours.

Q. The Wabash tariff was the one that was to be filed with the Interstate Commerce Commission?

A. Yes, sir.

Q. Are you prepared to say that any of the others were filed with the Interstate Commerce Commission?

A. I am not. I am only controlled by the fact that each one has an Interstate Commerce Commission number.

Q. In a case of that kind—that is issued from the Wabash Company, your company was not the issuing company, and in a case of that kind the way you would become a party to that, so far as the Interstate Commerce Commission is concerned, would be by filing with the Commission the concurrence of the Southern Railway Company?

A. Yes, sir.

Q. Are you prepared to say that in this instance your concurrence was in fact filed with the Interstate Commerce Commission?

A. No, I could not state positively, except that it is the common practice of our office, of the Southern Railway, to examine each tariff which comes in the office and

if it is found to be acceptable to it, a concurrence notice is mailed to the Interstate Commerce Commission."

Page 146–7 of Printed Record.

In section 6 of the Act to Regulate Commerce, as that act existed between June 1, 1903, and February 1, 1905, provision is made requiring carriers to file joint tariffs with the Interstate Commerce Commission, as follows:

"Every common carrier subject to the provisions of this act shall file with the Commission hereinafter provided for, copies of its schedules of rates, fares and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same. Every such common carrier shall also file with said Commission copies of all contracts, agreements or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said Commission. Such joint rates, fares, and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said Commission, in so far as may, in the judgment of the Commission, be deemed practicable; and said Commission shall from time to time prescribe the measure of publicity which shall be given to such rates, fares, and charges, or to such part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published.

No advance shall be made in joint rates, fares, and charges, shown upon joint tariffs, except after ten days' notice to the Commission, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect. No reduction shall be made in joint rates, fares, and charges, except after three

days' notice, to be given to the Commission as is above provided in the case of an advance of joint rates. The Commission may make public such proposed advances, or such reductions, in such manner as may, in its judgment, be deemed practicable, and may prescribe from time to time the measure of publicity which common carriers shall give to advances or reductions in joint tariffs.

It shall be unlawful for any common carrier, party to any joint tariff, to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of persons or property, or for any services in connection therewith, between any points as to which a joint rate, fare, or charge is named thereon than is specified in the schedule filed with the Commission in force at the time."

We respectfully submit that plaintiff in error did not show that the joint tariffs in question were filed with the Interstate Commerce Commission, as required by law as aforesaid, and that for this reason said tariffs are not now, and never have been, any evidence in this case.

But whether the tariffs referred to are legal or not, and regardless of whether or not they were in force between June 1, 1903, and February 1, 1905, they cannot in any way affect the judgment of the Circuit Court in this case. The finding of fact made and reported by the Circuit Court in this connection, was as follows:

"2. For the transportation from East St. Louis to said Southeastern points defendants apply a proportional rate which is 2 cents per 100 pounds greater than the rate to said Southeastern points from the Ohio River, if the hay is not unloaded at a warehouse in East St. Louis, regardless of whether or not the hay is shipped locally to East St. Louis or through-billed from the point of origin to the points of final destination, and regardless of provisions in their tariffs concerning through billing, but if the hay is unloaded at a warehouse in East St. Louis defendants exact for the trans-

portation thereof from East St. Louis to said Southeastern points, a rate which is 4 cents per 100 pounds greater than the rate from the Ohio River to said Southeastern points."

Page 213 of Printed Record.

This finding of the Circuit Court is fully sustained by admissions contained in the answer filed with the Interstate Commerce Commission by the Southern Railway Company, as aforesaid, and also by the testimony of Mr. Powell, Mr. Peachy, Mr. Dye and Mr. Lucas herein above quoted, and by a finding of fact made by the Interstate Commerce Commission and contained in the Commission's said report and opinion. The Commission's finding in this connection was as follows:

"The defendants in this proceeding are the Mobile & Ohio Railroad Company, the Illinois Central Railroad Company, the Louisville & Nashville Railroad Company, and the Southern Railway Company. They all operate lines of railroad leading from East St. Louis, Illinois, to points south of the Ohio River and east of the Mississippi, and all engage in the transportation of various commodities from that point to the territory above defined. The defendants all have in effect what they term proportional rates on hay which is received at East St. Louis by them from their connections. These proportional rates to Southeastern points are two cents above the rate from the Ohio River when the shipment is made directly through East St. Louis, but if the hay is 'reconsigned' at East St. Louis the charge is 4 cents above the Ohio River rate. It is the imposition of this additional two cents for the privilege of reconsigning to which the complainant takes exception."

Page 39 of Printed Record.

However, while at first view there might appear to be some conflict in the evidence, there is not necessarily any conflict at all. The fact that from June 1, 1903, to February 1,

1905, the Southern Railway Company and other carriers operating south from East St. Louis applied for the transportation from East St. Louis to the Southeast of hay which originated beyond East St. Louis the two-cent proportional rate and the four-cent proportional rate does not even tend to show that there were not in force at the same time joint tariffs naming joint rates on hay from points beyond East St. Louis, such as Bowen, Illinois, through East St. Louis to points on the Ohio River, such as Cairo, Evansville, Louisville, and Cincinnati; and of course the reverse of this proposition would also be true. Establishing that such joint rates were in existence would not even tend to establish that the two-cent proportional rate and the four-cent proportional rate were not in existence. In fact, we are not prepared to say that joint tariffs similar to those referred to in the record were not in existence during said period of time, because we think a statement made by the Interstate Commerce Commission and contained in said Report and Opinion indicates that they were. In this connection the Commission said:

> "It is well understood that a through rate may properly be less than the sum of the locals to or from a divisional point. The mere fact therefore, that these defendants make in connection with Northern lines a joint rate on hay from points of production to points of consumption through East St. Louis which is less than the rate into that point added to the rate out does not establish the illegality of any of the rates involved."
> Page 15 of Printed Record.

What we do say is that the tariffs introduced by plaintiff in error are not proper evidence in this case, because Mr. Powell admitted the Wabash tariff had never been filed with the Interstate Commerce Commission and said he was unable to state whether or not any of the other tariffs introduced had

been so filed. When, in court, a party undertakes to prove that certain rates of transportation are in force by introducing tariffs of carriers, we think, before the tariffs are received in evidence, such party should be compelled to show that the tariffs have been filed with the Interstate Commerce Commission in accordance with the requirements of Section 6 of the Act to Regulate Commerce.

The record in this case, including cases cited in their brief by counsel for plaintiff in error, is simply eloquent with evidence showing how the Southern Railway Company and other common carriers of this country make and publish rates of transportation. Although the Act to Regulate Commerce provides for only two classes of rates, namely, a local rate to be applied to transportation between different points on one line, and a joint rate to be applied to transportation from a point on one line to a point on another line, or from a point on one line over two or more connecting lines to some destination point, the carriers by their practices have made another class of rates which they call "through rates", but which are not "joint rates", although such a "through rate", may be made by adding together two or more "joint rates", as well as by other combinations of rates. For instance, in this case, one such through rate on hay from points beyond East St. Louis to points in the Southeast is made by adding to the local rate from point of origin to East St. Louis the two-cent proportional rate from East St. Louis to points in the Southeast, and another such through rate on hay is made by adding to the local rate from point of origin to East St. Louis the four-cent proportional rate from East St. Louis to points in the Southeast, but the carriers who make and control these local rates do not make, or help to make, or in any way control, the two-cent and four-cent proportional rates, while the carriers who make

and control the two-cent and four-cent proportional rates do not make or help to make, or in any way control, said local rates. Such through rates on hay from points of origin beyond East. St. Louis to points in the Southeast are also made by adding to a joint rate from point of origin, through East St. Louis, to a point on the Ohio River another rate from such point on the Ohio River to a point in the Southeast, but the amount of the rate so added from the Ohio River depends, as explained by Mr. Powell (see page 87 of Printed Record), upon the point of origin, or, rather, upon the point of origin shown in the expense bill presented by the shipper when he reconsigns the shipment from the Ohio River to point of final destination in the Southeast. In this case also, the carriers who make and control the joint rate from point of origin to the Ohio River are not identical with the carriers who make and control the rate so added from the Ohio River to point of final destination in the Southeast. It should be stated, however, that Mr. Powell, in the explanation referred to, confined himself to a description of how the business is done at Louisville.

The important difference between the "joint rate" provided for in the Act to Regulate Commerce and the "through rate" made by carriers by combination as above described, is that the joint rate can never be made except by agreement between all the carriers who participate in the transportation from point of orign to point of final destination, while the through rate made by carriers as aforesaid is never made in that way, and defendant in error freely admits that between June 1, 1903, and February 1, 1905, the Interstate Commerce Commission had no control over the divisions of such joint rates agreed upon by and between the interested carriers; it could neither compel the carriers to make such agreements nor oblige them to desist from doing so; but defendant in error is

not now and never has been interested in any division of a joint rate, has never attempted to compare a local rate, in this case, with the division of a joint rate, or compare a local rate with any other rate. It is, however, undertaking to compare the two-cent proportional rate with the four-cent proportional rate, for the purpose of showing undue preference and undue prejudice, in violation of section 3 of the Act to Regulate Commerce, and resulting unreasonableness, in violation of section 1 of said act, and thinks it has a perfect right to do so. The four-cent proportional rate is just as much a division of a through rate as the two-cent proportional rate is; they are both applied to the transportation of the same kind of traffic, over the same lines and between exactly the same points, and the territory where the traffic originates is the same when the two-cent rate is applied as when the four-cent rate is applied.

We have no occasion to criticise the rulings of courts and the Interstate Commerce Commission in cases cited by counsel for plaintiff in error in their brief. Those rulings simply announce what we understand to be the settled law, namely, that simply showing that a carrier exacts a greater charge for the transportation of traffic over its lines from B to C, where the traffic orginates at B, than it contemporaneously accepts as its division of a joint rate for transporting the same kind of a shipment over the same line from B to C, where the traffic originates at A, and is in fact a through shipment from the time it leaves A until it reaches C and is transported from A to C under such joint rate, is not sufficient to establish undue preference and undue prejudice, in violation of section 3 of the Act to Regulate Commerce; but, as we have shown above, this principle has no application to the case at bar.

In their presentation of this case to the Circuit Court of Appeals, counsel for plaintiff in error did not call the two-cent

proportional rate a division of a joint rate. They called it a division of a through rate, and this seems to be counsel's contention in this case so far as the characterizing of the rate in question is concerned. In this connection and under the circumstances, we think they should be commended for [redacted] calling the two-cent proportional rate a division of a through rate instead of a division of a joint rate.

We have said the four-cent proportional rate is just as much a division of a through rate as the two-cent proportional rate is, and we now purpose to show that the Southern Railway Company and other carriers who applied the two-cent proportional rate and the four-cent proportional rate from East St. Louis to the Southeast between June 1, 1903, and February 1, 1905, treated both those rates as divisions of through rates and treated the shipments to which both rates were applied as through shipments from points of origin beyond East St. Louis to final points of destination in the Southeast, and for the good and sufficient reason that they were obliged to do so in order to avoid coming into conflict with a ruling of the Supreme Court of the United States. It will be seen that in each instance the application of the rates by the Southern Railway Company and other carriers who hauled the hay South from East St. Louis, was for the transportation of the same kind of traffic over the same lines and between exactly the same points, and so far as the carriage of the traffic was concerned, that service was performed by said carriers under exactly similar circumstances and conditions, and under circumstances and conditions which were the same as would apply from East St. Louis to the Southeast for the transportation of hay which originated at East St. Louis and to which, under the tariffs of the Southern Railway Company and said other carriers, the local rate from East St. Louis, that is to say, the five-cent rate, would be applied.

Section 2 of the Act to Regulate Commerce makes it unlawful for a carrier to exact a greater charge from one party than from another for the transportation of the same kind of traffic over the same line and between the same points where the traffic in each instance is transported by the carrier under substantially similar circumstances and conditions, and as between the two-cent proportional rate and the four-cent proportional rate on the one hand, and the five-cent or local rate on the other, the only matter advanced by witnesses for plaintiff in error to show dissimilarity in circumstances and conditions, is competition. Therefore, if the three classes of shipments here referred to were all treated as originating at East St. Louis, the same rate would have to be applied to one of said shipments as to another, unless competition could be used to show dissimilarity in circumstances and conditions. On this point the ruling of the Supreme Court above referred to, is as follows:

> "It may be that the phrase 'under substantially similar circumstances and conditions', found in section 4 of the act, and where the matter of the long and short haul is considered, may have a broader meaning or a wider reach than the same phrase found in section 2. It will be time enough to determine that question when it is presented. For this case it is enough to hold that that phrase, as found in section 2, refers to the matter of carriage, and does not include competition."
>
> Wight v. United States, 167 U. S. 512, 518.

In **Interstate Commerce Commission v. Alabama Midland Railway Company** *et al.*, which is called the Alabama Midland case, the Supreme Court held that where the matter complained of was a violation of section 3 or section 4 of the act, competition might be advanced to show dissimilarity in circumstances and conditions, but the Court distinguished that case from the Wight case, above referred to, as follows:

"To prevent misapprehension, it should be stated that the conclusion to which we are led by these cases, that, in applying the provisions of the 3rd and 4th sections of the act, which make it unlawful for common carriers to make or give any undue or unreasonable preference or advantage to any particular person or locality, or to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, competition which affects rates is one of the matters to be considered, is not applicable to the 2nd section of the act.

As we have shown in the recent case of **Wight v. United States**, 167 U. S. 512 (42: 258), the purpose of the 2nd section is to enforce equality between shippers over the same line, and to prohibit any rebate or other device by which two shippers, shipping over the same line, the same distance, under the same circumstances of carriage, are compelled to pay different prices therefor, and we there held that the phrase 'under substantially similar circumstances and conditions', as used in the second section, refers to the matter of carriage, and does not include competition between rival routes.

This view is not open to the criticism that different meanings are attributed to the same words when found in different sections of the act; for what we hold is that, as the purposes of the different sections are different, the phrase under consideration must be read, in the second section, as restricted to the case of shippers over the same road, thus leaving no room for the operation of competition, but that in the other sections, which cover the entire tract of interstate and foreign commerce, a meaning must be given to the phrase wide enough to include all the facts that have a legitimate bearing on the situation—among which we find the fact of competition when it affects rates.

In order to further guard against any misapprehension of the scope of our decision it may be well to observe that we do not hold that the mere fact of competition, no matter what its character or extent, necessarily relieves the carrier from the restraints of the 3rd and 4th sections, but only that these sections are not so

stringent and imperative as to exclude in all cases the matter of competition from consideration in determining the questions of 'undue or unreasonable preference or advantage', or what are 'substantially similar circumstances and conditions'. The competition may in some cases be such as, having due regard to the interests of the public and of the carrier, ought justly to have effect upon the rates, and in such cases there is no absolute rule which prevents the Commission or the courts from taking that matter into consideration."

Interstate Commerce Commission v. Alabama Midland Railway Company *et al.*, 168 U. S. 144, 166–167.

It is evident, therefore, that the Southern Railway Company and other carriers, who haul the hay South from East St. Louis, do now treat and have always treated the shipments to which they apply the two-cent and four-cent proportional rates as through shipments from point of origin beyond East St. Louis to final destination in the Southeast, and we have shown the reason why they do so.

That the Southern Railway Company and other carriers, who haul the hay south from East St. Louis, have always considered the four-cent proportional rate a division of a through rate, is conclusively shown also by testimony and other evidence in the record, some of which we will here refer to. In this connection the testimony of Mr. Dye on cross-examination was as follows:

"Q. Under the reconsigning arrangement now you may take a bill of lading of a shipment to East St. Louis and have it reconsigned at 27 cents, on that?

A. We can——

Q. Answer the question, and then if you want to, make an explanation. Say yes or no and then explain.

A. Put your question again.

Q. I say, you may now, and since the 1st of June, 1903, take a bill of lading of this local shipment to East St. Louis, and have a reconsignment on that at the 28-cent rate?

A. No, sir, no bill of lading goes; you can not take a bill of lading; you have got to furnish an expense bill.

Q. Well, I mean an expense bill for the shipment to East St. Louis?

A. Yes, sir.

Q. All that is required for this reconsignment is that you furnish evidence by the expense bill that the product has borne a transportation charge on rails coming in here?

A. We are required by the Southern Freight Association——

Q. Can not you answer the question by saying yes or no, and then explain?

Mr. Whitnel: He has answered it.

Mr. Kramer: He may answer yes or no and then explain?

A. Will you let me explain?

Q. By Mr. Kramer, continuing: Yes, you may explain afterwards.

A. I will say yes.

Q. Now explain.

A. On surrender of the paid expense bill showing a movement of the car to East St. Louis, Mr. Frink, the Chairman of the Southern Freight Association, will certify that we are entitled to a rate four cents above the Ohio River rate. He certifies that there is so much paid up to East St. Louis, and certifies so much paid between East St. Louis and the Ohio River, and the Ohio River rate added, making the through rate, which is two cents per 100 pounds above the tariff on every single car.

Q. Above the tariff? What do you mean by that?

A. From the point of shipment.

Q. You mean it is two cents more than the through rate?

A. Two cents more than the through rate on every single car.

Q. But this applied where you had a local shipment to East St. Louis and then desired to send it on——

A. It is the understanding that the Southern Freight Association was to give us the balance of the rate.

Q. How was that?

A. It has been the understanding that the Southern Freight Association was to give us the balance of the rate.

Q. What do you mean by the Southern Freight Association was to give you the balance of the rate?

A. The balance of the through rate. We have had bills of lading that showed it; from the Southern Railway, and the I. C. and the Mobile & Ohio.

Q. When did that understanding prevail?

A. I have furnished a block of them to the Interstate Commerce Commission; the evidence shows it.

Q. Have you any now?

A. I have in my files in St. Louis.

Q. Can you bring one and furnish it to us here?

A. Yes, sir.

Q. Was that by the Southern Railway?

A. Yes, sir. And the Illinois Central and others.

Q. Bring one of the Southern?

A. I will bring it.

Q. That will be a case where a car came in here local and was billed on at 26 cents?

A. No, billed on at 28 cents; stamped 'balance of the rate'.

Q. You can furnish us a bill of lading where they stamp 'balance of the rate'?

A. Yes, sir.

Q. Who put that stamp on?

A. The Southern Railway.

Q. What kind of a stamp was it?

A. A rubber stamp.

Q. How did it read?

A. 'Balance of the rate.' It was not the balance of the rate; it was 2 cents per 100 pounds higher.

Q. Bring in one with a stamp of that kind. I mean a bill of lading that has been stamped in that way since June 1st, 1903.

A. I guess I have; but since I brought the complaints they have changed their stamp to make it read 'Reconsigning rate' now.

Q. Have you any, I say, that have been issued since then; since June 1st, 1903?

A. I stated I have got quite a number. Our complaint was not filed until May, 1904.

Q. Regardless of how they stamped the bill of lading, nevertheless this rate of 28 cents has been applied to all shipments where you have demonstrated the fact that the freight has borne one transportation charge into East St. Louis?

A. 1 did not just catch that.

Q. I say, this 28 cents reconsigning rate has been applied in cases where you have demonstrated by a paid expense bill that the freight has borne one transportation charge into East St. Louis. That has been the understanding?

A. Yes, sir.

Q. All you had to do was to demonstrate that fact and you would have the benefit of the reconsigning rate?

A. Yes, sir."

Pages 160, 161 and 162 of Printed Record.

It thus appears that the carriers have always regarded the shipments to which they applied the four-cent proportional rate as through shipments from points of origin beyond East St. Louis to final points of destination in the Southeast, but after this proceeding was instituted, they changed their stamp, which formerly read "Balance of rate", to read "Reconsigning rate". The word reconsigning itself indicates a through shipment, and there would be no excuse for the use of that term except in connection with a through shipment.

We have thus shown that neither the two-cent proportional rate nor the four-cent proportional rate, is a division of a "joint rate", although the Southern Railway Company and other carriers who haul the hay South from East St. Louis, treat both of them as divisions of "through rates"; that the carriers who haul the hay from points of origin to East St. Louis, are in no way connected with either of said proportional rates; and that it is therefore entirely proper and competent for defendant in error to compare the four-cent propor-

tional rate with the two-cent proportional rate for the purpose of proving undue preference and undue prejudice in violation of section 3 of the Act to Regulate Commerce, and as plaintiff in error has discussed this discriminating feature under No. 6 of its summary of assignments of error, we will do likewise.

We, therefore, say there is no force in any of the assignments of error urged by plaintiff in error on these grounds.

IV.

The Court did not err in refusing to hold as law the 4th, 7th, 9th and 19th propositions of law offered by the plaintiff in error and in modifying propositions of law 6th and 18th offered by plaintiff in error.

The 4th proposition submitted by plaintiff in error, and which the Court refused to hold as a proposition of law applicable, is as follows:

> "The report of the Interstate Commerce Commission and its conclusions, entitled report and opinion of the Commission in St. Louis Hay and Grain Company v. Mobile & Ohio Railroad Company *et al.*, introduced in evidence in this case in this Court by petitioner and marked 'Petitioner's Exhibit B', does not contain findings of fact, and findings of fact are not so prepared and arranged in said report, as required by law, so that said report can be introduced as evidence in this case."
> Page 206 Printed Record.

Under a separate heading we have pointed out to the Court that, as a matter of fact, the Commission did find facts, and further, that the preparation and arrangement of the report of the Commission is such as sets forth the facts found, in compliance with the requirements of the Act to Regulate Commerce. This answers the contention of plaintiff in error as to this 4th proposition.

However, in addition, we respectfully insist that the statement is not a proposition of law. As stated here, it can not be held as a proposition of law. First, it would require a finding of fact to the effect that there was not in the report findings of fact, and that such findings were not so arranged and prepared as to be admissible in evidence. If in fact the report found facts and was so arranged as to be admissible, then there is no proposition of law embraced here whatever. It is but a reit-

eration of plaintiff in error's objection to the admissibility of the report and findings of the Commission as evidence. It serves no purpose in this case that the objection to the admissibility would not serve, and we respectfully submit to this Court that the 4th proposition does not contain matter properly presentable as a proposition of law.

The 7th proposition submitted by plaintiff in error was as follows:

> "That one of the material issues made before the Commission in this case was whether or not the reconsigning rate from East St. Louis to Southeastern points was a reasonable and just rate; that this issue was a material one in this case and the Commission did not pass upon and determine the same."
>
> Page 208, Printed Record.

This proposition was refused by the court below and complaint is here made. The position of the plaintiff in error as to proposition 7 would be fully answered by merely referring this Court to proposition 8, which was held by the court below.

No. 8 is

> "That one of the material issues made before the Commission in this case was whether or not the reconsigning rate from East St. Louis to Southeastern points, was a reasonable and just rate."
>
> Page 208, Printed Record.

The only difference is that No. 7 embraced the language "And the Commission did not pass upon and determine the same". We submit that the question of whether or not the Commission did pass upon and determine such issue was purely a question of fact and such was not proper matter to be embraced in a proposition of law.

Again, answering this proposition as to the material issue contended for by plaintiff in error here, we respectfully call the

Court's attention to the answer of the plaintiff in error before the Interstate Commerce Commission, and especially to that portion of its answer following the general denial of the averments of paragraph 5 of the petition. Here it will be found that the plaintiff in error, after the general denial, particularizes and specifies the matters denied and as well adds affirmative averments. We quote the last paragraph of this answer:

> "It is true that the reconsignment privilege at East St. Louis is granted upon the condition that a somewhat greater rate shall be charged than the through rate from the point of origin to the point of destination, when reconsignment is not availed of, but the benefits to the shipper and the additional expense and trouble entailed upon the carrier fully justifies the slight additional charge." (Page 26, Printed Record)

Thus it will be seen that the plaintiff in error here by affirmative averment qualifies its general denial. It cannot in the same paragraph of the same plea blow hot and cold. In paragraphs 3 and 4 of its answer, it has admitted unqualifiedly the allegations of the petition of the defendant in error setting forth the violations complained of, and here in the last paragraph of its answer, it undertakes to excuse itself by saying that the greater rate exacted in this discrimination is excused and justified by benefits to the shipper and expense and trouble entailed upon the carrier. Thus, when we apply the rule of pleading and take this pleading most strongly against the plaintiff in error, it will be seen that the issue here made was the question of benefit to the shipper and trouble and expense to the carrier connected with this privilege of reconsignment, and thus fairly it is demonstrated that it was not a material issue made before the Commission as to whether or not the reconsigning rate from East St. Louis to Southeastern points was reasonable and just *per se*, that is to say, reasonable and just

in and of itself, and without reference to the circumstances and conditions under which it was exacted, including the lesser rate contemporaneously exacted by plaintiff in error from parties other than defendant in error.

Proposition No. 9, which was refused by the Court, is as follows:

> "The petition filed before the Interstate Commerce Commission introduced herein as 'Petitioner's Exhibit A', in this case does not complain of any undue or unreasonable prejudice or disadvantage to the localities and markets of East St. Louis or St. Louis, nor of any undue or unreasonable preference or advantage to Cincinnati, Louisville, Evansville, Cairo, Memphis and Nashville, or either or any of them, or other localities, and no issue or any undue or unreasonable prejudice or disadvantage against, or undue or unreasonable preference or advantage to, in favor of any locality or markets, was presented to the Commission in said case for determination. And there is no such issue in this case before this Court."
>
> Page 208, Printed Record.

We fail to see wherein such had any application to the pleadings or the issues here. The petition and answer before the Commission speak as to the allegations contained therein. Propositions 3, 5 and 6, as held, do apply to the issues. No. 9 is composed of declarations not at all applicable, and it was not error to refuse it for this reason. The supposed proposition of law is but a statement of plaintiff in error's contention as to the admissibility of evidence presented under the first summary of brief, and we have answered the contention as to the purpose and pertinency of such evidence herein under the first summary. There never has been any contention that such issue as stated in this 9th statement was here involved as a matter of fact, and hence there is in this case no room for such a proposition of law. Even if, as an abstract proposi-

tion of law, No. 9 was correct, still it was not applicable or responsive to any theory advanced or contended for upon the trial, and therefore it was proper for the Court to refuse to hold it upon the ground that it had no application. Plaintiff in error interposes as an objection to the evidence touching the absence of charge for reconsignment privilege at other gateways upon the ground and for the alleged reason that there was no complaint as to such discrimination in favor of other markets and against the East St. Louis market. We have, under the first summary, pointed out to this Court the relevancy of such evidence as bearing upon the issue involved in this suit, and we consider it unnecessary to reiterate that argument here.

Proposition No. 19, which was refused by the Court, and concerning which complaint is made, is as follows:

> "St. Louis Hay & Grain Company in its petition filed before the Interstate Commerce Commission in this case alleges that the reconsigning rate on hay from East St. Louis to Southeastern points is unreasonable and unjust. This allegation was denied by the defendant Southern Railway Company in its answer filed before the Interstate Commerce Commission. This issue of reasonableness is again made and raised by the pleadings in this Court. On this issue the only question is the reasonableness of the entire charge to the party who is charged. It is not competent for the St. Louis Hay & Grain Company to dissect the accounts of Southern Railway Company, allow this item, disallow that and maintain the accounts of the railroad in its own way. The reasonableness of the total charge on reconsigned hay from East St. Louis to Southeastern points is the sole question open on this issue, and such items as the alleged extra cost, charge or expense of two cents per 100 pounds for transfer or reconsigning hay at East St. Louis, or such items as the divisions of the total through rate by and between the several carriers forming the through joint line from East St. Louis to Southeastern

points, or such items as the one-cent bridge toll at Ohio River crossings, are in no wise material to the issue of the reasonableness of the total charge to the shipper for the total service of the transportation of hay reconsigned at East St. Louis for Southeastern points. It is not competent for the shipper to dissect and separate the several services of switching, transferring, side-tracking, coupling and uncoupling cars, breaking up cuts of cars, making up trains, ferrying or bridging rivers, etc., at various junctions and other points on the through route. These items or similar items can not be segregated from the whole by the shipper, and in no wise concern him. The only question open to him being the reasonableness of the total rate for the entire service rendered him."

Pages 211 and 212, Printed Record.

This is submitted as a proposition of law applicable to the case here. It seems to us to have more of the characteristics of an argument. We think that every element of law proper to be held as applicable here contained in this statement is embraced in other propositions held by the Court. The principal feature here seems to be that of dissecting or separating the several items and that the whole rate must be considered together. This feature is covered by proposition 18, as held by the Court. Propositions 10, 11, 12 and 13, as held, refer to matters contained in this statement and are directed to propositions here assembled, and it will be observed by the Court that No. 8, as held, contains the law, as contended for by plaintiff in error, as to the reconsigning rate. Other propositions held also embrace some of the principles here announced. This being true, even if 19 was a correct statement as a proposition of law, it was altogether unnecessary for the Court to repeat what it had announced in other propositions.

Proposition No. 6, asked by plaintiff in error, was as follows:

"Where a petition and complaint is filed before the Interstate Commerce Commission under and by virtue of the Act to Regulate Commerce, and issues are made upon such petition and complaint, it is the duty of the Commission to pass upon each and every material issue made, and if the Commission, upon an investigation, makes an order for reparation and suit is brought in a Circuit Court of the United States to enforce such order, and it is there made to appear that said Commission did not pass upon each and every material issue made before the Commission, it is the duty of the Circuit Court of the United States to remand the cause to the said Commission for further proceedings according to law."

Page 211, Printed Record.
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This proposition the Court modified by striking out the words "remand the cause to said Commission for further proceedings according to law" and instead thereof added the words "refuse to enforce the order". We fail to see how this modification could prejudice the plaintiff in error. If the Court should refuse to enforce the order of the Commission, this would certainly be all that could result in benefit to the carrier. If the Court should have held with the plaintiff in error and thereupon entered a judgment refusing to enforce the order, or, in other words, a judgment in favor of the plaintiff in error, this would have resulted in relieving plaintiff in error of all liability, hence it follows that there is nothing in the modification of which the plaintiff in error could rightfully complain.

The 18th proposition of law offered by the plaintiff in error was as follows:

"In determining the resonableness and justness, or unreasonableness and unjustness, of a rate, the shipper is only concerned in the total charge made, and as to whether or not the charge as a whole is reasonable and just. He is not concerned in the various items

making up the entire charge and can not inquire into the reasonableness and justness of an item or items making up the entire charge."

Page 21[illegible], Printed Record.

This proposition was modified by the Court adding the words "alone and independently", making the last paragraph read, "He is not concerned in the various items making up the entire charge and can not alone and independently inquire into the reasonableness or unreasonableness of an item or items making up the entire charge". Counsel complained of this modification. It is asserted that "The fact that the Court inserted the words 'alone and independently' in the proposition, shows that it (the Court) did consider separate items, making up a total charge in connection with other rates in determining the reasonableness of the reconsigning rate". We think the contention of counsel upon this point not only technical but erroneous. This proposition, as held, states that the rate as a whole is to be considered in determining its reasonableness. The shipper is only concerned in whether or not the charge as a whole is reasonable and just; and further exemplifying, the proposition states that the shipper is not concerned in the various items making up the total, and can not alone and independently inquire into the reasonableness of such items. That is, he can not separately attack the reasonableness of the various items, but he must question the joint sum of such items as they together make up the total charge or rate. Thus it will be seen the proposition, as held by the Court, is a correct and a plain statement of the law as it applies to the question presented by plaintiff in error upon this phase of the case.

The Act to Regulate Commerce makes no provision requiring the Court to find propositions of law, and the most that

could be said would be that the rules apply here which apply generally in the trial of civil cases. Following the general rule pursuant to the Federal statute, if upon the questions of practice the rules applicable and in force in this State apply, then we think clearly under authorities of the Supreme Court of the State of Illinois, that there can be no just complaint made by the plaintiff in error of any of the Court's rulings as affecting supposed propositions of law. In the case of the **County of LaSalle v. Milligen, 143 Ill. Sup. 321,** the Court held that the purpose of the statute in allowing the submission of propositions of law to the Court trying a cause without a jury, is to enable the parties to obtain the opinion of the Court upon controlling material principles of law only. And also held that when a proposition calls for the opinion of the Court upon a question of fact, it may be properly refused. This rule is reiterated and affirmed in the case of **O'Flaherty v. Mann, 196 Ill. 304.** It will be noted that, measured by this rule, none of the propositions of law submitted by plaintiff in error, which were refused by the Court, were free from the objection which is here made a sufficient reason for such refusal. This, we think, in connection with the further fact that the material propositions requested in the propositions refused, are embraced in propositions held by the Court, refutes the contention of plaintiff in error contended for under the 4th summary of their assignment of errors and disposes of the questions raised by the 20th to the 25th, inclusive, of the assignment of errors.

V.

The Court did not err in rejecting and refusing to find special findings of fact offered by plaintiff in error and in substituting its own findings of fact.

Under this heading the plaintiff in error includes thirty-six separate assignments of error, from 26 to 61, inclusive.

The authorities relied on and cited by the plaintiff in error are: **The Francis Wright, 105 U. S. 381; The E. A. Parker, 140 U. S. 360; The City of New York, 147 U. S. 72.** All these cases were of admiralty and maritime jurisdiction, and governed by the Act of February 16, 1875. (18 Stat. at l. 315.)

In the case above referred to, the City of New York, the Court held that in construing the Act of 1875, the facts found by the court below are conclusive; that the bill of exceptions can not be used to bring up the evidence for a review of these findings; that the only rulings upon which the Supreme Court is authorized to pass are such as might be presented by a bill of exceptions prepared as in actions at law, and that the findings have practically the same effect as the special verdict of a jury; second, that it is only the ultimate facts which the Court is bound to find, and that the Supreme Court will not take notice of a refusal to find the mere incidental facts which only amount to evidence from which the ultimate fact is to be determined.

In the **E. A. Parker case** above cited, Justice Brown, in delivering the opinion, said:

> "This Court has repeatedly held that under the Act of February 16, 1875, we are no longer at liberty to pass upon disputed questions of fact, but are bound to accept the findings of the Circuit Court as conclusive, and limited to the determination of questions of law as to the validity of such rulings excepted to at the time as may be presented by a bill of exceptions as prepared in actions at law."

The **Francis Wright case**, *supra*, holds the Act of 1875, above referred to, constitutional, and also in passing upon the duty of the Circuit Court as to holdings on request as to the material facts, holds that this rule does not apply to mere incidental facts which only amount to evidence bearing upon the ultimate facts of the case. Questions depending upon the weight of the evidence are under the law to be conclusively settled below, and the fact in respect to which such an exception may be taken, must be one of the material and ultimate facts on which the correct determination of the cause depends.

The Supreme Court of the United States in the **Abbottsford case, 98 U. S. 440,** where the case went to the Supreme Court on writ of error, following **United States v. Kings, 7 Howard 845,** held that the decision of the Circuit Court upon the questions of fact must, like the finding of a jury, be regarded as conclusive; that the writ of error can bring up nothing but questions of law. There, referring to the Statute of 1865, providing for the trial of questions of fact by the Court without a jury, and to the reproduction of this statute in sections 649 and 700 of the Revised Statutes, the Court further said:

> "Under it (this statute) we have universally held that a bill of exceptions cannot be used to bring up the evidence for a review of the findings of fact. The facts as found and stated by the court below are conclusive; the case stands here precisely the same as though they had been found by a verdict of a jury."

We think there can be no doubt that the provision of the act to regulate commerce providing for the action here brought, renders this suit a suit at law, and that as such it is governed by the rules applicable to suits at law and is a civil case.

Section 700 of the Revised Statutes, above referred to, provides:

> "When an issue of fact in any civil cause in a Circuit Court is tried and determined by the Court without the intervention of a jury according to section 649, the ruling of the Court in the progress of the trial of the cause if excepted to at the time and duly presented by a bill of exceptions may be reviewed by the Supreme Court upon a writ of error or upon appeal; and when the finding is special, the review may extend to the determination of the sufficiency of the facts found to support the judgment."

And section 649 of the Judiciary Act provides that the finding of the Court upon the facts, which may be either general or special, shall have the same effect as the verdict of a jury.

Upon the question of practice, we think that the rules in force in the courts of the State of Illinois under the provisions of the Federal act would apply, so far as requesting said findings of fact is concerned, in a cause tried in the Federal Court without the intervention of a jury.

There is no provision of the law of Illinois or of the Act to Regulate Commerce involved in this case whereby the Court is required to make special findings of fact, and we do not think it error in any sense for the Court to refuse to mark held any proposition of fact submitted by counsel upon the trial. Certainly such refusal would not be error where the Court made a finding of fact which embraced the ultimate facts, if any, submitted by counsel.

Anderson's Dictionary of Law, page 1065, in defining what constitutes the ultimate facts, uses the following language:

> "The expression 'ultimate facts' is opposed to probative, evidential. And as the probative or evidential facts are such as serve to establish or disprove the issues, the issues are, therefore, the ultimate facts."

It follows, applying this definition, that if the findings of the Court in the case at bar are such as support the plaintiff's

cause upon the issues presented, then such findings will not be disturbed and this Court will not go into the question of weighing the evidentiary facts for the purpose of determining where the preponderance of the evidence lies. We contend that the propositions of fact submitted by plaintiff in error are not ultimate facts. We believe a review of these propositions will be all-sufficient to convince this Court that the request was not for a finding on ultimate facts. It is certain, however, that whatever there may have been embraced in these propositions of fact that was material and important, or proper to be found as a fact, is embraced in the special findings of fact included in the decision of the Court. The important propositions submitted by plaintiff in error, as we view it, are in conflict with the facts alleged in the petition of the defendant in error before the Interstate Commerce Commission, and admitted in the answer of the plaintiff in error to that petition. Again, a number of propositions are in conflict with the great weight of the evidence in the case, and for this reason it would have been proper for the Court to have refused the same, even if same had been material facts.

In the case of Dooley v. Pease, 180 U. S. 126 (45 Law Ed. 457), it was held:

> "Where a case is tried by the Court, a jury having been waived, its findings upon questions of fact are conclusive in the Court of review; it matters not how convincing the argument that upon the evidence the findings should have been different. Errors alleged in the findings of the Court are not subject to revision by the Circuit Court of Appeals or by this court, if there was any evidence upon which such findings could be made."

This rule must be applied here, and it follows that if there is any evidence to support the findings of the court be-

low as made, then this Court cannot properly reverse such findings. This, we think, disposes of the question raised by the fifth summary of the plaintiff in error. We shall have occasion to point out to this Court the evidence in this record supporting the findings of the court below under another heading of this brief. It is unnecessary to repeat and therefore we omit reference to it under this summary.

VI.

The judgment of the Court is not contrary to the undisputed and uncontradicted evidence in the case, and is not contrary to the law in the case, and the Court did not err in rendering judgment in favor of defendant in error and against plaintiff in error.

It has been the contention of the plaintiff in error, urged under various errors assigned in the Circuit Court of Appeals and reassigned in this court, that the judgment of the court below is contrary to the undisputed and uncontradicted evidence in the case and contrary to the law in the case, and that the Circuit Court erred in rendering judgment in favor of the defendant in error and against the plaintiff in error. Counsel has heretofore presented five separate propositions which they contend cover these questions, and also contend that the judgment of the Circuit Court cannot be sustained if these propositions are established by the uncontradicted and undisputed evidence in the case.

For the convenience of this Court we will follow the plan heretofore adopted by plaintiff in error and present our views on said proposition in the order in which they were argued by opposing counsel.

> 1st. "That during the time in question (June 1, 1903, to February 1, 1905) plaintiff in error maintained a local rate on shipments of hay from East St. Louis to Southeastern points of five cents per hundred pounds above the rate from Ohio River points to Southeastern points. For example, a rate of 29 cents from East St. Louis to Atlanta."

Defendant in error says that such a local rate existed, but says that it never had any bearing upon, or was in any way connected with the issues involved in this case, as is clearly

shown by the testimony of Mr. Powell, quoted by us in connection with arguments made by counsel for plaintiff in error under another summary. Concerning the local rate referred to, Mr. Powell was interrogated and replied as follows:

> "Q. Explain to the Court the situation with reference to shipments initial at East St. Louis proper going to Atlanta?
>
> A. That is really an almost unknown condition. * * * The 29-cent rate primarily applies at the present time to establish a rate from local territory on the Southern Railway and other lines to East St. Louis."
>
> Page 58, Printed Record.

We are unable to understand how a rate prescribed from East St. Louis simply for the purpose of measuring rates from other points, can have any bearing upon the matters here in question.

2nd. Counsel for plaintiff in error said:

> "That during the time in question, it maintained a reconsigning rate on hay of four cents per 100 pounds above the rate from Ohio River points to Southeastern points, for example, a rate of 28 cents from East St. Louis to Atlanta; that in the reconsigned shipments it dealt wholly with the shipper and had no transactions with other carriers."

Defendant in error says that during the time in question plaintiff in error maintained a proportional rate on hay from East St. Louis to Atlanta, which was made by adding four cents to the rate on hay from Cairo, Illinois, to Atlanta, and that the total rate thus made and applied from East St. Louis to Atlanta was 28 cents per 100 pounds; that after defendant in error filed its petition in this case, as aforesaid, with the Interstate Commerce Commission, plaintiff in error changed its practice of calling this rate "Balance of rate" and thereafter called it "Reconsigning rate", but absolutely denies

that in connection with shipments to which plaintiff in error applied such rate plaintiff in error dealt wholly with the shipper. On the contrary, defendant in error states that plaintiff in error during said time compelled the shipper to deal with the Southern Freight Association, as is shown by the uncontradicted testimony of Mr. Dye, which is as follows:

> "On surrender of the paid expense bill showing a movement of the car to East St. Louis, Mr. Frink, the Chairman of the Southern Freight Association, will certify that we are entitled to a rate of four cents above the Ohio River rate. He certifies that there is so much paid up to East St. Louis and certifies so much paid between East St. Louis and the Ohio River, and the Ohio River rate added, making the through rate, which is two cents per hundred pounds above the tariff on every single car."
>
> Page 161, Printed Record.

The undisputed evidence in the record is that said four-cent rate was in effect continuously from some time in the year 1894 until the time this case was tried in the Circuit Court. In this connection the testimony of Mr. Powell was as follows:

> "Q. Is that all you desire to say about the four-cent rate?
>
> A. It has been in effect about ten years—twelve years according to the records I have."
>
> Page 68, Printed Record.

And the uncontradicted testimony of Mr. Dye is that from said time in 1894 until June 1, 1903, plaintiff in error never applied that four-cent rate on any shipment of hay transported from points of origin beyond East St. Louis to the warehouse of defendant in error at East St. Louis and reloaded at said warehouse and afterwards shipped from East St. Louis to points in the Southeast over the lines of railway of plaintiff in

error and other carriers having lines of railway leading South from East St. Louis. The testimony of Mr. Dye in this connection is as follows:

> "Q. What are the rates that applied, that were applied from June, 1903, to February, 1905, on shipments?
>
> A. On reconsigned shipments that statement covers, 4 cents per 100 pounds over the Ohio River rate.
>
> Q. How long have you been obliged to pay that rate on reconsigned cars?
>
> A. Since June, 1903.
>
> Q. How was it before that?
>
> A. Before that we handled the business through the warehouse in the same manner we do now, reloading from Northern line cars, and also used Northing [Northern] line cars in the same manner we do now, we consigned hay to the South at 2 cents per 100 pounds over the Ohio River rate.
>
> Q. Was that the same rate which was contemporaneously applied on through shipments, as they have been called in this case?
>
> A. Yes, sir, it was.
>
> Q. So that previous to June 1, 1903, you did not have to pay anything extra on account of it being reconsigned?
>
> A. No, sir. We handled the cars from the warehouse in the same manner we do now."
>
> Page 154, Printed Record.

It is an undisputed fact in this record that prior to June 1, 1903, notwithstanding this so-called reconsigning rate had been included in the tariffs of plaintiff in error since 1894, it had not been applied, but the shippers had been, during all this time, freely accorded the 2-cent proportional rate on shipments of hay to Southeastern points regardless of whether or not such hay was reconsigned at East St. Louis. It appears from the evidence in the record that this fair treatment continued just so long as open competition prevailed between railways having lines touching the Southeastern territory with their North-

ern terminus at East St. Louis, but so soon as such open competition was modified by the organization of such lines in the Southern Freight Association, thereupon and as stated by Mr. Dye and Mr. Lucas hereinbefore quoted, the four cents above the Ohio River rate was enforced and collected upon reconsigned shipments.

In another part of this brief we will have something further to say concerning the reasonableness of a discrimination thus brought about.

> 3rd. "During the time in question it [plaintiff in error] received as its portion of through shipments of hay originating at points beyond East St. Louis and shipped through East St. Louis to Southeastern points, for its part of a haul from East St. Louis to Southeastern points, a rate of two cents per 100 pounds above the rate from Ohio River points to Southeastern points, for example, a rate of 26 cents from East St. Louis to Atlanta; that in these transactions it dealt wholly with the connecting carrier and had no transactions with the shipper. In other words, in all cases in which it received a rate of two cents above the rate from Ohio River points to Southeastern points, it was a 'division' of a through rate."

The above proposition presented as a contention by plaintiff in error is, we think, in the main answered by our argument herein presented under the third summary. There we think we have demonstrated the incorrectness of plaintiff in error's position embraced in the above statement or proposition. Here we find the declaration of plaintiff in error again in conflict with its answer under oath filed with the Interstate Commerce Commission. In this statement it alleges that during the time in question it received the two cents above the Ohio River rate on shipments as its portion of a through rate. In its answer it admits that it maintained in force upon its lines of railway schedules of rates whereby it is

provided that the charges exacted for transporting hay in carloads over its lines from East St. Louis to Southeastern points shall be two cents per 100 pounds in addition to the regular established rates for transporting hay in carloads from Cairo, Illinois, to said Southeastern points, when the shipments originate at points on railroads other than its own and are not reconsigned at East St. Louis, and four cents per 100 pounds in addition to such established rates when the shipments are reconsigned at East St. Louis, and further admits that it exacted four cents per 100 pounds in addition to such established rates between Cairo and said Southeastern points while it contemporaneously transported in carloads hay that was not reconsigned at East St. Louis for other shippers and between exactly the same originating and destination points for two cents per 100 pounds in addition to said established rates between Cairo and said Southeastern points.

We have in the argument under the 3rd summary pointed out to the Court that the tariffs introduced in evidence by the plaintiff in error, subject to the objection of the defendant in error, were not proper evidence, and there we have designated the reasons why such tariffs were not proper to be considered. We do not desire to reiterate our reasons why such evidence was improper, but we refer the Court upon this question to what we said under the other summary. The plaintiff in error in this statement says also "that in these transactions it dealt wholly with the connecting carrier and had no transactions with the shipper", and in support of this proposition it referred in its brief in Circuit Court of Appeals to Exhibits 12, 13 and 14, as showing the billing in case of a through shipment in connection with the testimony of Mr. Powell.

In this connection, we beg to call the Court's attention again to the fact that the only difference, so far as the deal-

ings between the parties were concerned, when the two-cent or 26 cent rate and the four-cent or 28-cent rate was exacted, was that in the latter instance, after the organization of the Southern Freight Association, that the four-cent rate was required to be obtained by presenting expense bills to the Southern Freight Association, which acted for the plaintiff in error and other lines. We most respectfully contend that this statement of plaintiff in error is in conflict with the evidence of the witnesses, quoted by us under summary 3, where the record page is given, and that it is also in conflict with the findings and opinion of the Interstate Commerce Commission herein as well as with the special findings of the court below.

Before leaving this subdivision, we wish to call attention to a contention of counsel for plaintiff in error made in the court below. They called attention to the fact that where hay was waybilled from points of origin to East St. Louis in the first instance, the bills of lading were corrected by the Northern lines, so that final destination showed a point in the Southeast instead of East St. Louis, and that the corrected bills of lading were presented to the Southern lines after the hay was reloaded at the warehouses and delivered to the Southern lines for shipment to the Southeast. They claim this shows an abuse of the through rate and a fraud upon Southern Railway Company, but counsel for plaintiff in error have apparently overlooked the fact that such shipments were entitled to the two-cent proportional rate from East St. Louis to the Southeast regardless of whether or not they were waybilled in the first instance to East St. Louis or forwarded from points of origin on through bills of lading showing destination points in the Southeast, if the hay originated at points beyond East St. Louis.

Counsel for plaintiff in error further said in this connection:

"This corroborates the testimony of Mr. Powell to the effect that Southern Railway had no knowledge of such practices."

The testimony of Mr. Dye shows that defendant in error does a very large business. He said their shipments of hay aggregated about 5,000 cars a year. Page 153, Printed Record.

As we have before shown, Mr. Powell admitted that the four-cent rate had been in existence since some time in the year 1894, but plaintiff in error has not attempted to show in this case that it, or any other carrier which operates a line leading from East St. Louis to the Southeast, exacted this four-cent rate in one single instance between 1894 and June 1, 1903, on shipments of hay which were reconsigned at East St. Louis. Plaintiff in error also said that East St. Louis and St. Louis taken together, constitute the largest hay market in the United States. Under these circumstances and because that market had undoubtedly been made large by the carriers permitting hay to be reconsigned there without extra charge, we think it unreasonable to ask this Court to believe that plaintiff in error and other carriers who haul hay South from East St. Louis were completely deceived continuously during the period of nine years, by the hay dealers of East St. Louis, including defendant in error. The truth seems to be that up to the time these carriers with lines to the Southeast associated themselves together as the Southern Freight Association, the four-cent rate was entirely ignored and all shippers freely accorded the two-cent proportional rate from East St. Louis, if the traffic in fact originated at points beyond East St. Louis. It also appears that they discontinued giving the reconsignment privilege at to hay dealers East St. Louis without extra charge at a time when it was their practice to accord that

privilege at other points without requiring shippers to pay anything in addition to the through rate from point of origin to final destination.

By the 65th assignment of error the plaintiff in error complains of the allowance by the court below of $350.00 attorney's fee. The "Act to Regulate Commerce" under which this suit is prosecuted, Section 16, provides:

> "If the judgment of the Circuit Court shall be in favor of the party complaining, he or they shall be entitled to recover a reasonable counsel or attorney's fee to be fixed by the Court which shall be collected as part of the costs in the case."

The amount fixed is not attacked as unreasonable. This assignment of error was not argued by counsel, and we think not insisted upon. It was said:

> "It abridges the privileges and immunities of the defendant being a citizen of the United States."

We think the constitutionality of such statute is upheld in

A., T. & S. F. R. Co. v. Matthews, 174 U. S. 96 (43 L. Ed. 909);

St. L., I. M. & S. Ry. Co. v. Paul, 173 U. S. 404 (43 L. Ed. 746);

Fidelity Mut. L. Assn. v. Mettler, 185 U. S. 308 (46 L. Ed. 922).

Corporations are not citizens within the meaning of the clause of the Constitution declaring that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

P. C. S. Mining & Milling Co. v. Penn., 125 U. S. 181 (31 L. Ed. 650.)

"Fourth. The reconsigning rate of four cents above the rate from Ohio River points to Southeastern points was reasonable and just."

If by this statement counsel for plaintiff in error meant to contend that in and of itself, independent of the circumstances and conditions surrounding and under which the 4 cents above the Ohio River rate was exacted, the 28 cents from East St. Louis to Atlanta is not too much for the haul, then we reply that no such issue has ever been in this case, but, if it is meant here to assert, that the 4 cents above the Ohio River rate, making up the 28-cent rate charged on reconsigned hay, under all the circumstances and conditions surrounding and under which it was exacted, was reasonable and just, then we insist that such contention is not supported by the record here, but, on the contrary, that its unreasonableness and unfair and discriminating character and effect is shown by abundant evidence produced upon the trial.

We have no occasion to differ from the authorities here cited by counsel; they simply establish rules for determining the reasonableness *per se* of rates where undue preference and undue prejudice are not shown.

The argument offered in the court below by counsel in support of this contention is fully answered by us under summaries one and three of this brief, where we fully considered this feature of the case, and we will therefore refrain from repeating the argument here.

Plaintiff in error said:

5th. "It is the contention of plaintiff in error that the reconsignment rate is in the nature of a local rate and can not be compared with a division of a through rate, but if same are compared the uncontradicted and undisputed evidence in this case shows that the difference in the service is greater than the difference in the rate charged."

We have already fully answered what is said here concerning the right of defendant in error to compare the four-cent proportional rate with the two-cent proportional rate, and demonstrated, we think, our right to make such comparison. We have shown that both rates are of exactly the same nature, applied by plaintiff in error from the same point of origin to the same destination points, over the same lines and upon the same kind of traffic, and that the condition upon which the two-cent proportional rate is applied is exactly the same as the condition upon which the four-cent proportional rate is applied, namely, that the origin of the traffic shall be some point beyond East St. Louis and on a line of railway other than that of plaintiff in error. We will now undertake to demonstrate that the findings of fact made and reported by the Circuit Court in this case, showing that while plaintiff in error made a discrimination of two cents per 100 pounds between the shipments of hay which were reconsigned at East St. Louis and those which were not so reconsigned, the difference in cost to plaintiff in error between the reconsigned shipments on the one hand, and the shipments which were not reconsigned, on the other, was not more than one cent per 100 pounds, was fully supported by the testimony introduced by the parties in the Circuit Court.

No. 1 of the findings of fact made by the Circuit Court, reads as follows:

> "1. Large quantities of hay produced in territory east, north and west of East St. Louis are consumed in Southeastern territory, and much of it is carried through the East St. Louis gateway aud passes over defendant's lines of railway from East St. Louis to points south of the Ohio River. With the exception of the Illinois Central, defendant's lines terminate in East St. Louis, and generally, also, lines of railway over which the hay is carried from said producing points to East St. Louis terminate at that point."
>
> Page 213, Printed Record.

The statements contained in No. 1 are supported by said report and opinion of the Commission, and are not disputed by plaintiff in error.

No. 2 of the findings of fact made by the Circuit Court, reads as follows:

> "2, For the transportation from East St. Louis to said Southeastern points, defendants apply a proportional rate which is 2 cents per hundred pounds greater than the rate to said Southeastern points from the Ohio River, if the hay is not unloaded at a warehouse in East St. Louis, regardless of whether or not the hay is shipped locally to East St. Louis or through billed from the point of origin to the points of final destination, and regardless of provisions in their tariffs concerning through billing, but if the hay is unloaded at a warehouse in East St. Louis defendants exact for the transportation thereof from East St. Louis to said Southeastern points, a rate which is 4c. per hundred pounds greater than the rate from the Ohio River to said Southeastern points."
>
> Page 213, Printed Record.

The statements contained in No. 2 are supported by an admission in the answer of plaintiff in error, to the petition of defendant in error filed with the Interstate Commerce Commission as aforesaid, and by said report and opinion of the Commission, and are also supported by the following testimony:

Dye, page 154, Printed Record;
Powell, page 88, Printed Record;
Peachy, page 113, Printed Record;
Lucas, page 173, Printed Record.

No 3 of the findings of fact made by the Circuit Court, reads as follows:

> "Complainant operates two warehouses at East St. Louis and most of the hay it handles it purchases on the track at East St. Louis, unloads, inspects, assorts and reloads at said warehouses, and sells at Southeastern

points, in competition with other hay dealers who do not unload the hay at East St. Louis. In such competition complainant is therefore prejudiced to the extent of two cents per hundred pounds by defendant's method of applying rates of transportation as aforesaid. Defendants claim that this 2 cents difference in rates is justified by difference in cost to them between the two kinds of transportation services they are called upon to perform."

Page 213, Printed Record.

The statements contained in No. 3 are supported by said report and opinion and the testimony in the record clearly shows that it has long been the practice of plaintiff in error and other carriers, having lines leading from East St. Louis to the Southeast, to so adjust their rates to and from points on the Ohio River, including Cairo, Evansville, Louisville, and Cincinnati, and to and from Memphis and Nashville, that hay dealers at those points could reconsign their carloads of hay without paying for such privilege anything in addition to the through rate from point of origin to point of final destination. One witness said that had been the practice of the carriers at Nashville for the last fifteen years.

Dye, pages 153 to 155, inclusive, Printed Record;
Edwards, page 169, Printed Record;
Harrison, pages 170 and 171, Printed Record;
Bartlet, pages 171 and 172, Printed Record;
Lucas, pages 173 and 174, Printed Record.

No. 4 of the findings of fact made by the Circuit Court, reads as follows:

"At East St. Louis transfers of loaded cars from the Northern to the Southern lines and transfers of empty cars from the Southern to the Northern lines is generally made by a connecting railroad company, and the charge made by that company for such service is $4.00 per car, when the hay is unloaded as aforesaid,

but only $2.00 per car when the hay is not so unloaded, and in each instance this charge is paid by the carrier which hauls the hay South from East St. Louis."

Page 213, Printed Record.

The statements contained in No. 4 are supported by said report and opinion and not disputed by plaintiff in error.

No. 5 of the findings of fact made by the Circuit Court, reads as follows:

"5. When the hay is unloaded as aforesaid, an empty car must be furnished for the shipment by the carrier which hauls the hay South from East St. Louis, and the service of so furnishing is fairly worth from 40 to 60 cents per car."

Page 214, Printed Record.

The statements contained in No. 5 are supported by said report and opinion and by comparison with switching charges of connecting railroads at East St. Louis. In this connection we refer the Court to Plaintiff's Exhibit No. 2, which shows the switching charges in effect April 1, 1904, on the connecting railroad at East St. Louis owned by plaintiff in error and known as the Venice & Carondelet Belt. In this exhibit under the heading "Rules and Regulations", the following paragraph appears:

"a1. The rates named herein apply on loaded cars only, and will include handling of empty cars to or from connecting line or industry, unless otherwise noted."

Page 221, Printed Record.

And under the heading of "Grain or Hay via Elevators and Warehouses for Transfer or Otherwise", switching charges are prescribed as follows:

"Grain or hay between V. & C.-S. Ry. connections, and elevators or warehouses located on V. & C.-S. Ry. tracks, for transfer or otherwise.

½c per cwt. minimum $1.50 per car into elevators or warehouses.
½c per cwt. minimum $1.50 per car out of elevators or warehouses."

Page 222, Printed Record.

It will be thus seen that on April 1, 1904, the Southern Railway Company would have switched a carload of hay from one of the Northern lines to the National Warehouse of defendant in error for $1.50 and would afterwards have switched either that carload or another carload of hay from the National Warehouse to one of the Southern lines for an additional $1.50, which would make an aggregate charge of $3.00 for all the switching that would be necessary for transferring a carload of hay from one of the Northern lines to any one of the Southern lines, including the line of plaintiff in error, and this charge would include a stop en route at the warehouse of defendant in error, but this is not all. Said aggregate charge would also include the return of an empty car in the opposite direction and would include also, of course, the use of both the loaded car and the empty car while they were being so transferred. We respectfully request the Court to contrast what is here so clearly demonstrated; that is to say, the total cost of $3.00 per carload of hay, with the attempt made by counsel for plaintiff in error to show that the switching services which would be necessary in making such transfers would cost the plaintiff in error $8.10. In other words, they ask this Court to believe that switching services plaintiff in error voluntarily offered to perform on April 1, 1904, for the sum of $3.00, would really cost plaintiff in error the sum of $8.10. Of course, such a proposition is unreasonable, but it is not out of line with other positions taken by plaintiff in error during the progress of the trial in this case.

No. 6 of the findings of fact made by the Circuit Court, reads as follows:

> "6. The car is in use from two to three days longer when the hay is unloaded as aforesaid than when it is not so unloaded, and a fair compensation for such use is 20 cents per day."
>
> Page 214, Printed Record.

The statements contained in No. 6 are supported by said report and opinion and an agrement between carriers concerning the charge made per day for the use of a car. Concerning this per diem charge, we will have something further to say hereafter.

No. 7 of the findings of fact made by the Circuit Court, reads as follows:

> "7. When hay is unloaded and reloaded at warehouses as aforesaid, the time consumed in doing the work averages from six to eight hours, but the expense of such unloading and reloading is borne entirely by the shipper."
>
> Page 214, Printed Record.

The statements contained in No. 7 are supported by said report and opinion and not disputed by plaintiff in error. They are also supported by the testimony of Mr. Dye and Mr. Snell. Mr. Dye said the time consumed in unloading and reloading the hay at the warehouses of defendant in error averaged less than three hours per carload.

> Dye, page 148, Printed Record.
> Snell, pages 178 to 179, inclusive, Printed Record.

No. 8 of the findings of fact made by the Circuit Court, reads as follows:

> "8. Shipments of hay to which the rate of two cents per 100 pounds above the rate from the Ohio River is applied as aforesaid, and which are not un-

loaded at East St. Louis warehouses are frequently transferred from one car to another in the railroad yards at East St. Louis either because cars in which the hay is shipped to East St. Louis from the North are out of repair, or because the Northern lines are not willing to allow their cars to go South from East St. Louis. The expense of such transfer is from $1.25 to $1.50 per car, and this expense is borne entirely by the carrier which hauls the hay South from East St. Louis."

Page 214, Printed Record.

The statements contained in No. 8 are supported by said report and opinion and the testimony of Mr. Lucas and Mr. Dye. Mr. Lucas said he had known cars to remain in the yard of the Louisville & Nashville Railroad Company a week at a time waiting for empty cars into which the hay might be transferred from the loaded cars.

Lucas, page 176, Printed Record;
Dye, page 156, Printed Record.

No. 9 of the findings of fact made by the Circuit Court, reads as follows:

"9. The transfer charge of $4.00 per car above mentioned was formerly $3.00 per car, and the transfer charge of $2.00 per car above mentioned was formerly $1.50 per car."

Page 214, Printed Record.

The statements contained in No. 9 are supported by said report and opinion and are not disputed by plaintiff in error. We thus see that the switching charges have been increased to the extent of 33⅓ per cent, and in this connection, we call the attention of the Court to the fact that both the Commission and the Circuit Court, in measuring the additional cost to plaintiff in error in connection with the reconsigned shipments, allowed plaintiff in error the full benefit of this advance of 33⅓ per cent.

No. 10 of the findings of fact made by the Circuit Court, reads as follows:

> "10. The weight of hay in cars shipped as aforesaid from East St. Louis to Southeastern points is from 1,000 to 2,000 pounds greater when the hay is reloaded at East St. Louis warehouses than when it is not so reloaded. This is an advantage in favor of reconsigned hay."
>
> Page 214, Printed Record.

The statements contained in No. 10 are supported by said report and opinion and by the testimony of Mr. Peachy and Mr. Dye. Mr. Peachy was one of the witnesses of plaintiff in error and his testimony in this connection was as follows:

> "Q. It is your understanding, is it not, that when a car is reloaded, that is an advantage to the railroad, for the reason that the next load is heavier than the first one?
>
> A. Depends on the quality of the hay that is in the car whether it is heavier or lighter.
>
> Q. What is the fact? You know how the business is done. Don't the cars that go out of East St. Louis, after being reloaded, average a greater weight than those that come in?
>
> A. Yes, sir, it is a fact; it will average probably two or three thousand pounds per car, but as a rule not to exceed 22,000 to 23,000 pounds."
>
> Page 113, Printed Record.

The testimony of Mr. Dye agreed with that of Mr. Peachy.

Peachy, page 113, Printed Record;
Dye, page 152, Printed Record.

No. 11 of the findings of fact made by the Circuit Court, reads as follows:

> "11. Cars from the North, after being unloaded at the warehouses as aforesaid, are frequently reloaded for the South, thus avoiding expense to the Southern

line of placing an empty car and subtracting perhaps a day from the additional time of the car service."
Page 214, Printed Record.

The statements contained in No. 11 are supported by said report and opinion and by the testimony of Mr. Snell and Mr. Dye. They are also supported by Exhibit No. 46 of plaintiff in error.

Exhibit No. 46, page 294, Printed Record.
Snell, pages 179 and 180, Printed Record;
Dye, pages 148 to 152, inclusive, and page 184, Printed Record.

No. 12 of the findings of fact made by the Circuit Court, reads as follows:

"12. That taking everything into account the average additional expense to Southern lines in case of reconsigned hay will not exceed that of direct through shipments by more than $2.00 to $2.50 per car, which is equivalent on the average loading of hay to about 1 cent per hundred pounds."
Page 214, Printed Record.

The statements contained in No. 12 are supported by said report and opinion. The statements of the Circuit Court here referred to show that the Court struck a balance between the advantages and disadvantages to plaintiff in error between the shipments which were reconsigned and those which were not reconsigned. In No. 4, No. 5, and No. 6 of the findings of fact of the Circuit Court, the Court stated that the expenses incident to the reconsigned shipments and not incident to the shipments which were not reconsigned, were:

Extra transfer charge of the connecting railroad company, $2.00; expense of furnishing empty car, 40 to 60 cents, and use of car an additional two or three days, 60 cents; and in No. 8, No. 10 and No. 11 of the findings of fact of the Circuit

Court, the Court described matters of offset which reduced the difference in expense, above noted, namely, expense of transferring in yard of plaintiff in error, when a car is damaged or for some other reason is not allowed to go through to final destination in the Southeast, $1.25 to $1.50 per car; greater revenue derived by plaintiff in error from reconsigned shipments than from shipments not reconsigned because of excess of 1,000 to 2,000 pounds per car in weight of former, and reduction in expense to plaintiff in error caused by cars received from the Northern lines being reloaded at the warehouses of defendant in error, which obviated the necessity of plaintiff in error furnishing an empty car.

We respectfully submit that the comparison of the Circuit Court here referred to was entirely fair to plaintiff in error and conclusively shows that so far as cost to plaintiff in error is concerned, one cent per 100 pounds would fully cover the difference between the shipments which were reconsigned at East St. Louis and those which were not reconsigned.

No. 13 of the findings of fact made by the Circuit Court, reads as follows:

> "13. Much of the hay which actually passes through East St. Louis might reach its Southern destination via other gateways. Hay grown in different sections also competes via these other gateways in the South with that which does or might pass through East St. Louis. These gateways are Cincinnati, Louisville, Evansville, Cairo, Memphis, Nashville, and perhaps others. The testimony showed that at all these points hay could be stopped off, unloaded and treated as the complainant handles its hay at East St. Louis, without the imposition of any charge in addition to the through rate. The testimony showed that these markets all competed with East St. Louis, but the force of that competition did not appear."
>
> Page 214, Printed Record.

The statements contained in No. 13 are supported by said report and opinion and also very fully sustained by testimony in the record. The testimony of Mr. Powell in this connection was as follows:

> "The same competitive factors enter into the rate from East St. Louis to Atlanta, as from the Ohio River, that is the competition of commodities of local markets in the South and local production in the South and different means of transportation from other sections of the country. Exactly the same conditions prevail at that shipping point as at others."

Page 65, Printed Record

The testimony of witnesses of defendant in error, showed very clearly that hay might be reconsigned at such points on the Ohio River as Cairo, Evansville, Louisville and Cincinnati and at Memphis and Nashville without the payment of any charge in addition to the through rate from point of origin to point of final destination.

The statement of Mr. Edwards, Commercial Agent of the Nashville, Chattanooga & St. Louis Railway Company, in this connection, was that he knew the reconsignment privilege had been permitted at Nashville without extra charge for the last fifteen years.

Powell, page 65, Printed Record;
Dye, pages 153 to 155 inclusive, Printed Record;
Edwards, page 169, Printed Record;
Harrison, pages 170 and 171, Printed Record;
Barlett, pages 171 and 172, Printed Record;
Lucas, pages 173 and 174, Printed Record.

No. 14 of the findings of fact made by the Circuit Court, read as follows:

> "14. The complainant actually paid to the Southern Railway Company on reconsigned shipments of hay, at

the rate of 2c per 100 pounds, the difference between the reconsigning rate and the rate on hay not reconsigned, the sum of $3,144.17."

Page 215, Printed Record.

The statements contained in No. 14 are supported by said report and opinion and admitted in the stipulation of the parties in this case hereinbefore referred to.

Stipulation, pages 34 and 35, Printed Record.

That the findings of fact made and reported by the Circuit Court and hereinabove referred to separately are fully supported by said report and opinion of the Interstate Commerce Commission, is admitted by plaintiff in error. In this connection, counsel for plaintiff in error in their brief and argument in court below said:

> "The findings of fact substituted by the Court are matters gleaned from the report and opinion of the Interstate Commerce Commission and are a mere syllabus of that report and opinion * * * ."

In further discussing matters connected with subdivision No. 5 of No. 6 of the summary of plaintiff in error, we will use, by way of illustration, the "Union" Warehouse of defendant in error, which is located on the connecting railroad operated by Wiggins Ferry Company, because, as stated by the general superintendent of plaintiff in error, Mr. Cooper, in connection with the transfer of cars to and from the "National" Warehouse of defendant in error, by reason of its ownership of the Venice & Carondelet Belt Railroad, plaintiff in error has an advantage over other carriers at East St. Louis.

Page 124, Printed Record.

It would seem as though 40 to 60 cents per car ought to furnish plaintiff in error sufficient compensation for taking an

empty car from its railroad yard and delivering it to the Wiggins Ferry Company for transportation to the Union Warehouse. Of course other empty cars destined to points on the Wiggins Ferry Company tracks would be so delivered at the same time, and when plaintiff in error does not furnish an empty car, it performs no services at all in connection with the reconsigned shipments, which it does not also perform in connection with shipments not reconsigned. It simply pays an additional transfer charge of $2.00 per car to the connecting railroad company, and for that $2.00 the connecting railroad company makes as many moves of the car as may be necessary. It will thus be seen that so far as the issue here is concerned, it makes no difference whether the number of moves made on the connecting railroad is 17 or 70, and in this connection we call the attention of the Court to the fact that during the first portion of the period from June 1, 1903, to February 1, 1905, plaintiff in error furnished empty cars for only a portion of the shipments made over its line by defendant in error. During the latter portion of that period, however, plaintiff in error furnished empty cars in many instances because it had new cars it wished to put into service, and requested defendant in error to load them.

Dye, pages 148 to 152, inc., and page 184, Printed Record;
Snell, pages 178 and 179 and 180, Printed Record;
Exhibit No. 46, page 294, Printed Record.

Witness for plaintiff in error said it takes from three to five days to get a reconsigned shipment of hay through East St. Louis (pages 122, 134 and 139, Printed Record), but this is in conflict with the testimony of Mr. Dye and Mr. Snell above referred to (pages 148, 178 and 180, inclusive, Printed Record), and when we remember that only six to eight hours of this

time is consumed in unloading and reloading at the warehouse of defendant in error, we conclude that the Commission and the Circuit Court were very liberal with plaintiff in error in finding that a difference of from two to three days should be allowed in this connection. As between the two kinds of shipments there can be no difference whatever, either before they are delivered by the Northern lines to the connecting railroad company, or after they are delivered in turn by the connecting railroad company to the carriers which haul the shipments south from East St. Louis, and so far as movement on the connecting railroad is concerned, there can not be much difference. In passing from the Northern to the Southern lines via the Wiggins Ferry Company connecting railroad, the cars are moved directly by the warehouse of defendant in error (page 125, Printed Record), and the only extra time necessarily consumed in connection with a reconsigned shipment is the six or eight hours it takes to unload and reload at the warehouse, and such time as it may take to put a car into and take it out of the warehouse. It is evident that the distance from the Northern to the Southern line would be comparatively short.

For the use of the car, both the Commission and the Circuit Court allowed 20 cents per day. We think they allowed much more, because they allowed 60 cents, which would be 20 cents a day for three days, and the evidence above referred to indicates that only a small portion of that time was necessarily consumed by stopping the cars for unloading and reloading at the warehouse. It will hardly be contended that defendant in error should be prejudiced by difference in time not necessary, and for which the carriers alone are responsible.

In connection with compensation to the carriers for the use of the car, statements of the Commission were as follows:

"We do not agree, however, with the estimate put by the witnesses of the defendants upon the value of this service. Two of these witnesses estimate that a freight car is worth $1.50 per day. In our opinion there is no warrant for any such claim. The Commission has of late investigated the subject of private cars. It is claimed and generally believed that the returns to the owners of these cars are altogether excessive, yet that testimony disclosed the fact that the earnings from a stock car did not exceed from $6.00 to $8.00 per month; that the earnings from a refrigerator car under the most favorable circumstances, did not exceed from $12.00 to $18.00 per month. The demurrage charge is only $1.00 a day, and that is imposed not on the basis of a fair *quantum meruit*, but as a penalty to secure the prompt release of the car. The carriers themselves have agreed on 20 cents a day as the per diem charge which should be made, and we think that is enough, when, as in this case, the car is not actually moving but standing still, practically all the time."

Page 44, Printed Record.

Of course, refrigerator cars, as compared with other freight cars used, are very expensive, but there would probably not be much difference in cost between a stock car and an ordinary box car, such as is used for shipments of hay. The record shows that hay can be and is loaded into cars of comparatively small tonnage capacity, which would not be suitable for grain and other traffic, which require cars of comparatively large tonnage capacity. (Pages 126 and 127 Printed Record.)

The record also shows that the cost of what is known as a "standard" box car, fully equipped with air-brakes, automatic couplers, etc., is only $765.00 (page 165, Printed Record), and that in 1903 a box car 36 feet in length and similar to those furnished defendant in error for its shipments of hay, except somewhat longer than the average, could have been purchased from the American Car & Foundry Company for

$495.00 each. (Pages 165 and 166, and 167 Printed Record.) At 20 cents a day a car would earn in one year $73.00. One year's interest on $500.00 at six per cent would be $30.00, and this would leave $43.00 a year for repairs. $43.00 a year ought to be sufficient, and evidently this is the opinion of the owners of private cars and the carriers to whom such owners lease their cars. However, the general superintendent of plaintiff in error submitted some figures which he said he received from the office of the auditor of plaintiff in error, and which were taken from its maintenance of equipment account. These figures indicated that for the years 1902, 1903 and 1904, the average cost of keeping a car in repair was about $71.00, or a little less than 20 cents a day (page 123, Printed Record), and the general superintendent said that taking into consideration the interest on capital invested and the depreciation of the car, he figured the cost of maintaining the car would be 52 cents a day. (Pages 123 and 124, Printed Record). On cross-examination, the witness admitted that he was not well informed concerning the manner in which said account was kept (page 127, Printed Record), but he said he asked the auditor by wire whether or not it included new cars purchased to take the place of cars damaged in wrecks, and that the auditor replied by wire that it did not. (Page 127, Printed Record.) It seemed peculiar that he should ask such a question under the circumstances, and he was requested to furnish copies of the telegrams, which he agreed to do. (Page 128, Printed Record.) He failed to produce the copies of the telegrams. Why he failed to do so, if he had them, as he claimed, is wholly unexplained by this record.

Plaintiff in error says the Interstate Commerce Commission, in its annual report to the Congress for the year 1902, stated that the charge of 20 cents a day was ridiculously low.

The proposition, then, is this: Plaintiff in error asks this Court to treat a statement made as above about the time the 20-cent-a-day arrangement was entered into by the carriers, and which at that time was undoubtedly the impression of the writer, as better evidence than a statement made after an exhaustive investigation of the subject-matter, in which testimony and other evidence was received under oath. If in regard to this contention the positions of the parties to this proceeding were reversed, the language opposing counsel would indulge in can be more easily imagined than described.

Plaintiff in error also says that the 20-cent-a-day arrangement has no relation to revenue or remuneration, but its witnesses said that charge was made 20 cents because carriers, who were more largely borrowers than lenders of cars, were unwilling to pay more (page 145, Printed Record), and the record in this case shows that for the fiscal year ending June 30, 1905, plaintiff in error paid $451,000 more than it received under this 20-cent-a-day arrangement. If the allowance of 20 cents is "ridiculously low", it is evident that during that year plaintiff in error obtained a ridiculous advantage over carriers from whom it borrowed cars. Is it possible that an arrangement which so widely affects every carrier operating a railroad in the United States, was entered into wholly without reference to revenue or remuneration?

It is interesting to note the manner in which plaintiff in error undertook to show the amount of compensation which should be allowed for the use of a freight car. Its assistant auditor said that by dividing the entire freight earnings of plaintiff in error, for the year 1905, by the total car service days for that year, he ascertained that the value of a freight car was $2.02 per day. (Pages 107 and 108, Printed Record.) Another witness of plaintiff in error said that by taking as factors

all the freight cars used and all the freight earnings received by all carriers operating railroads in the United States, he had been able to increase the above amount to $2.14 per day. (Page 145, Printed Record.) When we consider how small an item cost of freight cars is, when compared with cost of roadbed and all other items of expense incurred by carriers in connection with the transportation of freight articles, and call to mind the purpose for which this evidence was introduced, we conclude that further discussion of the matter would be inexcusable.

We think it has been clearly shown that plaintiff in error and other carriers who operate railroads between East St. Louis and the Southeast by arrangement among themselves and through the instrumentality of the Southern Freight Association, completely control the situation, so far as transportation of hay from East St. Louis is concerned. It has also been demonstrated that, outside of the traffic in question, the case before the Court is peculiar. Even at East St. Louis itself the carriers make no charge for the privilege of reconsigning grain. (Page 46, Printed Record.) Why, then, do they single out hay dealers located at that point as the only shippers who shall be required to pay for this privilege? Is it because the carriers think the East St. Louis hay dealers, by energy and prudence in the management of their affairs, have built up and are now conducting a business which will bear the extra charge without being destroyed? Or is it because the carriers wish to force from East St. Louis to other points the business of reconsigning hay? We do not know, but we do know that these matters taken either separately or in combination, or any similar matter, would not justify the discrimination complained of.

On pages 121 and 122 of their brief and argument, counsel for plaintiff in error quote from a decision of the Interstate Commerce Commission in **St. Louis Hay and Grain Co. v. Illinois**

Central Railroad Co. *et al.*, 12 I. C. R., pp. 486–487, and in connection with such quotations say:

> "The above case is conclusive of the case at bar and establishes the fact that it is perfectly proper to maintain local rates, reconsignment rates and divisions of through rates. The latter seem to vary to such an extent as to be greater in some instances than the reconsignment rate. The Commission in effect holds that these rates can not be compared and that neither throws any light upon the other as far as reasonableness or discrimination is concerned."

We wholly disagree with these statements of counsel for plaintiff in error. In that case the Commission decided exactly what it decided in this case, namely, that where expenses to a carrier are greater in connection with reconsigned shipments, than in connection with shipments which are not reconsigned, simply showing that the carrier exacts a greater charge for its services in connection with the transportation of the former than it contemporaneously exacts for its services in connection with the transportation of the latter, is not sufficient to show that the higher charge exacted is unlawful. In this case defendant in error contended before the Commission that it was unlawful for plaintiff in error to exact from it a greater charge in connection with the transportation of its reconsigned shipments than it contemporaneously exacted from other parties for its services in connection with the transportation of shipments which were not reconsigned, but upon this point the Commission held against defendant in error. It found that the expense to plaintiff in error for services performed by it was greater in connection with the reconsigned shipments, than in connection with the shipments which were not reconsigned, and held that under the circumstances and conditions developed in this case, it was lawful for plaintiff in error to exact

for its services, in connection with the reconsigned shipments, a rate which would be as much greater than the rate it contemporaneously exacted on the shipments which were not reconsigned, as the difference in cost between the two classes of services performed by plaintiff in error. The Commission found that one cent per 100 pounds would fully cover such difference, and condemned as unlawful the difference between that and the 2 cents per 100 pounds, which was in fact exacted, and accordingly awarded the defendant in error, as reparation, $1,572.08, or 1 cent per 100 pounds on the shipments made between June 1, 1903, and February 1, 1905.

We will not trespass further upon the time of the Court to review cases cited in their brief by counsel for plaintiff in error, because we fail to see wherein the rulings of the courts and the Commission in those cases conflict with the principles we are asking to have applied in the case at bar. The reasonableness of the four-cent rate, entirely disconnected from the two-cent rate, is not now and never has been an issue in this case, and we are not attempting to compare a local rate from East St. Louis with the division of a joint rate from a point beyond East St. Louis, or to compare any local rate with any division of any joint rate. The record shows that plaintiff in error and other carriers on February 1, 1905, reduced to the extent of two cents per hundred pounds the rates on hay from points on the Ohio River to points in the Southeast, which action, because of the regulations of the carriers, automatically reduced to the same extent the rates on hay from East St. Louis to the Southeast, including both the two-cent and the four-cent rate here in question, but those reductions made no change whatever in the matter complained of in this case. The conditions which caused the injury, to which the reparation herein applies, remained exactly the same after said reductions were made, as they had been before.

The plaintiff in error assumes the burden of demonstrating here that the findings of the Court upon questions of fact are not supported by any evidence upon which such findings could be made. This it must do, and it requires more than the statement that the evidence is such that the findings should have been or might have been different.

Dooley v. Pease, 180 U. S. 126 (45 L. Ed. 457).

VII.

What we have already said, we think, disposes of the sixty-eighth assignment of error made in the Circuit Court of Appeals and reassigned in this Court. In addition to these, we find that the plaintiff in error has made other assignments of error in this Court. The first and second assignment of errors which were additional, are general, and the argument of the case on the other errors disposes of these. They present nothing but the general contention that the Circuit Court of Appeals erred in holding that the Circuit Court was not in error in rendering decree in favor of the defendant in error, and second, that the Circuit Court of Appeals erred in not reversing the judgment of the United States Circuit Court. There is nothing therefore to be said concerning the first and second assignments made in this Court other than what has heretofore been presented by us in support of the judgment of the Circuit Court of the United States and of the Circuit Court of Appeals affirming the same.

The seventy-second assignment made by the plaintiff in error is likewise general in that it alleges that the Circuit Court of Appeals erred in failing to adjudge that the Circuit Court erred in not finding the issues for the plaintiff in error. This is fully answered in the general argument of the case and requires no further special attention here.

The seventy-third and seventy-fourth assignments referred to the rulings of the Circuit Court of Appeals on the request of plaintiff in error in the Circuit Court for finding of fact and law. These two assignments are fully answered by the argument in subdivisions four and five of this brief, and, we think, do not require further elaboration here. These assignments, in fact, are but a repetition of other assignments in error which were before the Circuit Court of Appeals and there received that court's attention.

This Court has held in United States v. Kings, 7th Howard 845, and in Abbottsford case, 98 U. S. 440, construing the statute of 1865 providing for the trial of questions of fact without a jury, that the bill of exceptions cannot be used to bring up the evidence for a review of the finding of the fact; the facts as found and stated by the court below are conclusive in the same way and to the same degree as if found by the verdict of a jury, and in the case of **Dooley v. Pease, 180 U. S. 126**, it was held that where the case was tried by the court without a jury, findings upon questions of fact are conclusive in this Court and errors based upon the finding of fact made by the trial court will not bring about a revision of such finding on the facts by the Circuit Court of Appeals or by this Court where there is any evidence upon which such findings could be made. The Circuit Court here made its findings of fact and we think we have demonstrated that each and every one of such findings are supported by evidence in the record. This true, no error assigned by the plaintiff in error on such findings made by the court below can avail it here.

As to the assignment of error based upon the propositions of law submitted to the court below, we think we have conclusively answered this in division four of this argument, where we insist we have demonstrated that the holding of the court below on the propositions submitted by the plaintiff below to the trial court were correct, and if correct, then the seventy-fourth assignment of error here is without merit. We think the statement in the opinion in the Circuit Court of Appeals, to which this assignment is directed, is sound and supported by the authorities cited by that court. However, if the holdings on propositions of law submitted to the trial court were in fact correct holdings, then the contention of the plaintiff in error as to the decision of the Circuit Court of Appeals on this

point is wholly without force as affecting the judgment of that court or of the trial court.

In its seventh-fifth assignment of error, plaintiff in error says:

> "Said Circuit Court of Appeals erred in holding that the exaction is in violation of Section 1 as being excessive and thereby produces unjust discrimination and undue disadvantages in violation of Sections 2 and 3, the error in this being that the Circuit Court of Appeals adjudges that a violation of Section 1 of the Act to Regulate Commerce constitutes in and of itself a violation of Sections 2 and 3 of the Act to Regulate Commerce; in other words, that unjust discrimination denounced by Section 2 of the Commerce Act and unreasonable preference or advantage denounced by Section 3 of the Act are one and the same thing as unreasonable rates denounced by Section 1 of the Act."

It is apparent that if any such error were made, it is wholly immaterial because whether or not a violation of one section of the act is also a violation of another section or other sections of the act, is a matter of no importance; but what the Circuit Court of Appeals did in fact say was:

> "The finding in our opinion supports the conclusion that the exaction is in violation of Section 1 as being excessive and thereby produced unjust discriminations and undue disadvantages in violation of Sections 2 and 3."
>
> (Record, page 349.)

In other words, the Circuit Court of Appeals said that under the circumstances described, the finding that the charge exacted was excessive, was equivalent to finding that the charge was also unduly discriminatory, but this is very different from saying that a violation of section 1 is necessarily a violation of sections 2 and 3.

We cannot see any force in the seventy-sixth assignment of error. The substance of this assignment is contained in other errors assigned in the U. S. Circuit Court of Appeals, and we have fully refuted and answered this position in another division of this brief.

We have endeavored to discuss fully and fairly every material matter advanced by counsel for plaintiff in error. We think that a thorough investigation of this case and the questions here involved will demonstrate to the satisfaction of this Court that the judgment of the Circuit Court and the Circuit Court of Appeals affirming same is fully supported by the record here and that the same should stand; that the record before this Court is such as furnishes ample support for the findings of the court below, which we contend are in keeping with the law, and therefore should be affirmed.

Respectfully submitted.

P. J. FARRELL,
L. O. WHITNEL,
Attorneys for Defendant in Error.

Reversed.

SOUTHERN RAILWAY COMPANY *v.* ST. LOUIS HAY & GRAIN COMPANY.

ERROR TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

No. 104. Argued March 8, 9, 1909.—Decided June 1, 1909.

A carrier which is at service and expense in stopping goods in transit for inspection and reloading for the benefit of the shipper is entitled to compensation in addition to the actual expense incurred.

Where the Interstate Commerce Commission has held, and its order has been affirmed by the Circuit Court and Circuit Court of Appeals, that

a carrier cannot charge for a service rendered at the request and for the benefit of the shipper any amount in excess of the actual expense incurred, and fixed a rate less than this court considers reasonable, this court cannot, where the testimony has not been preserved in the record, fix a fair and reasonable charge, but will reverse the judgments of both courts and remand the case to the former court with instructions to send the matter back to the commission for further investigation and report.

153 Fed. Rep. 728, reversed.

THIS was an action brought by the defendant in error on an award of the Interstate Commerce Commission. In a general way, the facts are as follows: The St. Louis Hay & Grain Company is a corporation organized under the laws of the State of Illinois, with its principal office at St. Louis, Mo., a dealer in hay, in the course of which business it operates two warehouses in East St. Louis, Ill. The railway company is the owner and operating a line of railway extending from East St. Louis through the Eastern District of Illinois to points in Southern States, to which the hay and grain company is engaged in shipping hay. The company buys some hay at its warehouses, brought in from the adjacent country, but a large portion of it is bought at points to the north and west. Some of the hay thus purchased is sent directly through East St. Louis in the cars in which it was originally loaded, but much of it is taken to its warehouses, there unloaded, inspected and reloaded for the Southern markets. This is called a reconsignment. Taking these cars which are to be reconsigned to the hay and grain company's warehouses and taking the reloaded cars therefrom involves the use of the cars for a longer time, and there is some expense in hauling the cars. For this the railway company had been in the habit of charging $4 or $5 a car, equivalent on the average loading to two cents per hundred pounds. On an application by the company to the Interstate Commerce Commission it was held, on May 15, 1905 (11 I. C. C. Rep. 90), that such charge was excessive and unreasonable, and that one-half thereof a car was sufficient. Upon that basis it awarded to the hay and grain company the sum

of $1,572.08, one-half the sum paid theretofore by it to the railway company. This sum not being paid, the hay and grain company, on January 23, 1906, filed its petition in the United States Circuit Court for the Eastern District of Illinois to recover the amount thus awarded, with interest, and also for an attorney's fee. A trial resulted on June 25, 1906, in a judgment in favor of the hay and grain company for the amount awarded by the commission, with interest thereon, and also for $350 as an attorney's fee. 149 Fed. Rep. 609. On error to the United States Circuit Court of Appeals for the Seventh Circuit the judgment of the Circuit Court was on April 16, 1907, affirmed (82 C. C. A. 614); whereupon the case was brought here on error.

Mr. Edward C. Kramer and *Mr. Claudian B. Northrop* for plaintiff in error.

Mr. P. J. Farrell and *Mr. L. O. Whitnel* for defendant in error.

MR. JUSTICE BREWER, after making the foregoing statement, delivered the opinion of the court.

This case rests on the findings and conclusion of the Interstate Commerce Commission, for while on the trial in the Circuit Court testimony in addition to that which was produced before the commission was received, yet the finding of the court was that "from all the evidence heard and adduced on the trial of this cause in this court, the court finds that the said findings of fact by the said Interstate Commerce Commission are supported and justified by the said evidence, and it is ordered that the said findings of fact as above recited and set out be and the same are adopted as the special findings of fact of the court and that the same be set out in the records of this court accordingly."

Nothing was of course added in the Circuit Court of Appeals which merely affirmed the judgment of the Circuit Court. We

turn, therefore, to the proceedings before the commission, and there is this finding of fact:

"While the question is perplexing, and while we may not have apprehended all the material points involved, we are strongly of the opinion and find that, taking everything into account, the average additional expense to southern lines in case of reconsigned hay will not exceed that of direct through shipments by more than from $2.00 to $2.50 per car, which is equivalent upon the average loading of hay to about one cent per hundred pounds."

The conclusions so far as material to this controversy are thus stated:

"The stopping of a commodity in transit for the purpose of treatment or reconsignment is in the nature of special privilege which the carrier may concede, but which the shipper cannot, in the present state of the law, demand as a matter of lawful right. *Diamond Mills* v. *Boston & M. R. R. Co.*, 9 I. C. C. Rep. 311. Carriers may not, however, discriminate between markets nor between individuals in the granting of such privileges. If this right is given to the markets which compete with East St. Louis in this business by these defendants, it should, *prima facie*, also be granted to that market. If these defendants allow this privilege to the competitors of the complainant at East St. Louis, they should accord it the same privilege.

"The case shows, although not very clearly, that the defendants concede this privilege at other competing markets, and that a track buyer in East St. Louis itself can send along a carload, which he purchases but does not unload, without the payment of this charge. It further shows, however, that the right to unload this hay and handle it at its warehouse is of value to the complainant, and that it costs these defendants something to accord that privilege.

"Under these circumstances, we think it is not an undue preference against this complainant if the railroads charge for the privilege what it actually costs them, but we do not think

that they should charge more than the actual cost. The case finds that the fair average cost when the complainant handles its hay through its warehouse over and above the cost of a through shipment is from $2.00 to $2.50 per car, or approximately one cent per hundred pounds. We think, therefore, that this reconsignment charge ought not to exceed the proportional rate by more than one cent, and that the complainant is entitled to recover whatever it has paid in addition to that sum."

It thus appears that the commission was of the opinion that the shipper could not demand as a matter of right the stopping of the hay for the purposes of treatment or reconsignment unless the same privilege was given to other shippers, and that, in granting this privilege, the railway company could only charge the shipper the actual cost. But this privilege involved to the railway company the cost of hauling to and from the warehouses and the use of the car for some hours, perhaps days. The commission found that $2 or $2.50 per car, or approximately one cent per hundred pounds, was the actual cost to the railway company.

We are unable to concur with the commission. If the stopping for inspection and reloading is of some benefit to the shipper and involves some service by and expense to the railway company, we do not think that the latter is limited to the actual cost of that privilege. It is justified in receiving some compensation in addition thereto. A carrier may be under no obligations to furnish sleeping or other accommodations to its passengers, but if it does so it is not limited in its charges to the mere cost, but may rightfully make a reasonable profit out of that which it does furnish. Especially is this true when, as here, the privilege is in no sense a part of the transportation, but outside thereof. Whether the conclusion of the commission that the carrier is under no obligations to permit the interruption of the transit is right, and whether it is or is not under such obligation, it is entitled to receive some compensation beyond the mere cost for that which it does.

We have been particular to copy the exact language used by the commission, for in another case between the same plaintiff and other railroad companies, involving the charges in a case of reconsignment of hay, decided on December 20 of the same year (*St. Louis Hay & Grain Company* v. *The Illinois Central Railroad Company et al.*, 11 I. C. C. 486), the commission made an order dismissing the complaint. It is true that the facts are not precisely like those in this case, but at the same time the difference in the conclusions of the commission is such as seem to suggest that perhaps on further examination the commission had come to a different conclusion.

The testimony taken before the commission is not preserved in the record, hence it would be impossible, even if proper with all the testimony before us, to fix the amount which would be a fair and reasonable charge. All we can do is to reverse the judgments of the Circuit Court and Circuit Court of Appeals and remand the case to the former court with instructions to send the matter back to the Commerce Commission for further investigation and report.

Reversed.